

SBA

SOP 60 04 4

Certificate of Competency Program

Office of Government Contracting

U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

National

SUBJECT: Certificate of Competency Program	S.O.P.	
	SECTION 60	NO. 04

INTRODUCTION

1. Purpose. To outline the policies and procedures for the SBA Certificate of Competency Program.
2. Personnel Concerned. All SBA employees involved in administering the Certificate of Competency Program.
3. Directives Canceled. SOP 60 04 3.
4. Originator. Office of Government Contracting.

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		PAGE 1

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Table of Contents

Paragraph	Page
Chapter 1. Overview of Certificate of Competency (COC) Program	
1. What Laws and Regulations Govern the COC Program?	9
2. What Is a COC?	9
3. What Is the Purpose of the COC Program?	9
4. What Definitions and Terms Are Most Frequently Used in the COC Program?	9
5. What Policies Apply to the COC Program?	9
Chapter 2. Eligibility Requirements for COC Consideration	
1. How Is a Business Determined Eligible for a COC?	13
2. What COC Eligibility Rules Apply to Non-Manufacturers?	13
3. What Rules Apply to Assemblers of Kits?	14
4. What Is the “Significant Portion” Requirement?	14
5. What if the Applicant or Its Principals Are on the “Debarred List?”	15
6. May SBA Presume a Firm to Be Non-Responsible?	15
7. How Are the Prime Contractor Performance Requirements (Limitations on Subcontracting) Applied to the COC Program?	15
Chapter 3. Processing COC Referrals	
1. When Must a Small Business Be Referred for COC Consideration?	19
2. What Does the Area Director Do When a COC Referral Is Received?	19
3. What Does the COC Supervisor Do When Processing a COC Referral?	19

4. How Does the COC Supervisor Prepare Control Records Using the “Certificate of Competency Automated Computer System” (COCACS)?	21
5. What Do I Do When a Small Business Indicates That it Will File an Application for COC Consideration?	23
6. What Do I Do When a Small Business Indicates That it Will File an Application for COC?	23
7. What Must I Do When Closing a Case for Reasons Other Than a Small Business Declining to File?	24
8. How Long Do I Have to Process a COC Referral?	25
9. What Do I Do When More Than One Contractor Has Been Referred for the Same Solicitation?	25
10. How Are Research and Development, and Talent and Creative Ability Referrals Processed?	26
11. What Do I Do if a Small Business’ Facilities, Major Small Business Suppliers, or Subcontractors Are Located Outside My Geographical Area of Responsibility?	26

Chapter 4. Processing COC Applications

1. Who Is Responsible for Surveying, Analyzing, and Evaluating a Small Business During the COC Progress?	27
2. What Does the COC Supervisor Do When a Small Business Submits a COC Application?	27
3. How Does the IS Begin the Survey and Analysis Process?	28
4. How Does the IS Analyze and Evaluate a Small Business’ Capacity and Capability?	29
5. What Is Required in the IS’s Analysis and Evaluation Report?	30
6. How Should the IS Assist the Financial Specialist?	33

7. How Does the FS Determine a Small Business' Financial Capability?	34
8. What Should the FS's Report Contain?	35
9. Can the IS or FS Recommend a Partial Award of a Contract?	37
10. Can the Scope of a COC Referral Be Limited?	37
11. Can a Field Visit Be Waived?	38

Chapter 5. Processing Tenacity and Perseverance Cases

1. When Is a COC Referral Based on Tenacity and Perseverance (T&P)?	39
2. What Must a T&P Referral Contain to Be Acceptable to SBA?	39
3. What Are the Procedures for Processing T&P Referrals and Applications?	39
4. What Does Certification as to T&P Mean?	39

Chapter 6. Processing Integrity Cases

1. What Is a COC Referral Based on Lack of Integrity?	41
2. What Is an Acceptable Referral for Lack of Integrity?	41
3. May I Release the Adverse Information to the Business?	42
4. What Are the Procedures for Processing Integrity Referrals and Applications?	42
5. When Should the SBA Office of Inspector General Be Notified When a Small Business or Its Principals Are Referred for a Lack of Integrity?	44
6. What Does Certification as to Integrity Mean?	45

Chapter 7. Area COC Review Committee and Area Office Actions

1. Who Is on the Area Review Committee?	47
2. What Does the Area Review Committee Do?	47

3. Is an Alternate Method of Processing COCs Through the Area Director Available?	48
4. What Does the Area Director Do With the Committee Recommendation?	50
5. When Must the Area Director Notify Headquarters Upon Receiving a COC Application?	51
6. Who Must the Area Director Notify of the COC Decision?	52
 Chapter 8. Responsibilities of SBA Offices and Headquarters	
1. What Is the Role of the Office of Industrial Assistance?	53
2. What Is the Role of the Office of Economic Development?	53
3. What Is the Role of the Office of General Law?	53
4. When Does SBA Headquarters Decide COC Applications?	54
5. Who Is on the Headquarters COC Review Committee?	54
6. What Is the Role of the COC Review Committee?	54
7. How Does SBA Headquarters Handle COC Appeals?	54
8. How Does SBA Headquarters Make Decisions on COCs Where the Contract Value Is More Than \$25 Million?	55
9. When Will Headquarters Conduct an Area Office Review?	56
 Chapter 9. COC Follow-up Procedures	
1. What Are the First Steps After a COC Has Been Issued?	57
2. What Must be Done if Award of the Contract Is Delayed?	57
3. What Must the COC IS and/or the FS Do When a COC Is Revalidated?	57
4. Can a COC Be Invalidated?	58
5. Who Is Responsible for Revalidating or Invalidating a COC?	58

6. What Must I Do if a Contract Is Not Awarded to the Certified Small Business?	58
7. What Must the Area Director (AD) Do When Notified That a Contract Will Not Be Awarded to a Small Business?	58
8. What Must I Do After a Certified Contract Has Been Awarded?	59
9. What Are My Responsibilities When Performing Follow-ups?	59
10. What Should I Consider When Performing a Follow-up?	60
11. How Often Must I Perform Follow-ups?	61
12. Can the COC Committee Recommend Increased Follow-up Activity?	61
13. How Do I Report Follow-up Activity?	62
14. Who Does Financial Follow-ups?	62
15. What Are the Financial Specialist's Responsibilities When Performing Financial Follow-ups?	63
16. What Is Required in the Financial Specialist's Follow-up Reports?	64
17. What Do I Do When a Contract Is Terminated for Default?	64
18. What Must the AD Do When Notified That a Contract Has Been Terminated for Default?	65
19. When Does the AD Report Follow-up Activity to the Office of Industrial Assistance?	65
 Chapter 10. Disclosure of COC Information	
1. Who May Disclose COC Information?	67
2. When May COC Information Be Disclosed?	67
3. What Must I Do When I Receive a Freedom of Information Act (FOIA) Request?	67

Appendices

1. Acronyms, Terms, and Definitions	69
2. COC Case Folders	73
3. Sample Outline for Industrial Specialist's Narrative Report	77
4. Standard Supporting Attachments for COC Reports	81
5. Outline for Financial Specialist's Report	83
6. SBA Form 104A, "Contract Progress Report"	91

Chapter 1

Overview of Certificate of Competency (COC) Program

1. What Laws and Regulations Govern the COC Program?

Section 8(b)(7) of the Small Business Act [codified at 15 U.S.C. Section 37(b)] authorizes the COC Program. Regulations for the COC Program are set forth at Title 13 of the Code of Federal Regulation (CFR) Section 125.5 and subpart 19.6 of the Federal Acquisition Regulation (FAR).

2. What Is a COC?

A COC is a written document issued by the Small Business Administration (SBA) to a Government contracting officer (CO). It certifies that a designated small business has the capability to perform on a specific Government procurement or sale contract.

3. What Is the Purpose of the COC Program?

The purpose of the COC Program is to provide the apparent successful small business offeror with an avenue of appeal to a CO's negative responsibility determination to award it a prime Government contract. One benefit of the COC Program is to help a small business establish or reestablish itself as a viable Government contractor.

4. What Definitions and Terms Are Most Frequently Used in the COC Program?

Appendix 1 contains the most frequently used acronyms, definitions, and terms in Government procurement actions and the COC Program; you should familiarize yourself with their meanings.

5. What Policies Apply to the COC Program?

To provide guidance to the COC Program, the SBA has developed the following general policy statements.

- a. SBA will issue or decline COC irrespective of the type of procurement, procurement method, or its dollar value.

- b. The COC procedure is available to all eligible small businesses who want to appeal the decision of a Government CO who has rejected an offer on a specific procurement for lack of responsibility.
- c. The time limit for processing a COC is generally 15 working days beginning with the first working day after receipt of an acceptable referral. SBA may extend this time limit with the CO's concurrence.
- d. SBA will not issue a COC without the written approval of the Standards of Conduct Committee when the applicant's sole proprietor, partner, officer, director, stockholder (with 10 percent or more interest), or a member of the household of these individuals, is a member or employee of a Small Business Advisory Council, SCORE, or ACE volunteer (see 13 CFR Part 105.602, "Standard of Conduct," and SOP 90 54, "SBA Advisory Councils").
- e. SBA has the statutory authority to review and certify a small business as to all elements of responsibility.
- f. SBA may decline to issue a COC to a small business for reasons other than those stated in the CO's referral.
- g. SBA will determine the responsibility of the referred small business and not its large business supplier. SBA will not survey large businesses, but will verify quotes from large businesses when included with the COC application.
- h. The Area Director (AD) for Government Contracting must make sure that prompt and adequate handling is given to COC applications. The AD may delegate responsibility for timely completion of COC applications to the COC supervisor or COC industrial specialist (IS).
- i. General discussions about the proposed issuance of the COC will be held with procuring agencies in the interest of keeping good relationships. These general discussions will occur after the COC Committee has met and voted to recommend issuance of the COC, but before final action. Preliminary recommendations about final decisions must not be released to anyone outside SBA before release of formal notifications. This does not apply to general discussions held with procuring agencies.
- j. When the buying agency has used option year prices to evaluate offers on a solicitation, SBA will also evaluate the contractor's responsibility to perform the basic contract and all options. Although the COC evaluation would include options evaluated by the referring agency, SBA would limit COC certification to the base period specified in the solicitation. For example, if a small business offered \$9 million for the base period of a solicitation and \$10 million for each of two options, the contractor would be evaluated for a potential total award

of \$29 million provided this method was used by the CO. If issued, a COC would only cover the base contract period. Since the base period is not more than \$25 million, the COC would be issued by the AD.

- k. When the value of the COC is less than \$100,000, the decision of the AD is final and the agency may not appeal an affirmative COC decision. However, in the interest of maintaining good relations with the agency, the AD will make every effort to discuss the facts surrounding the positive determination with the buying activity.
- l. The district director (DD) or the Assistant District Director for Minority Enterprise Development (ADD\MED) may request an advisory capability survey on an 8(a) business to determine its ability to perform a specific 8(a) contract.
- m. Once closed, a COC case cannot be reopened. If new and additional information is supplied by a buying activity, a new COC case will be initiated. The small business will be given the opportunity to submit documentation supporting its responsibility. The case will be processed within established time frames.

Chapter 2

Eligibility Requirements for COC Consideration

1. How Is a Business Determined Eligible for a COC?

The applicant must meet the small business size standard contained in the solicitation for which it is applying for a COC. An informal size determination is performed for each COC application.

- a. If the solicitation fails to specify a Standard Industrial Classification (SIC) code, the COC IS will assign the proper code to the solicitation to determine COC eligibility.
- b. In cases where the IS must assign a SIC code and there is a question as to the correct code, the IS should consult with the area office size specialist.
- c. Generally, for a set-aside procurement, the IS will determine the size status of a business (including its affiliates) as of the date the concern submitted a written self-certification that it is small to the procuring agency as part of its initial offer including price. For an unrestricted procurement, size is determined as of the date of the concern's application for a COC.
- d. A firm that applies for a COC must submit an SBA Form 355, "Application for Small Business Size Determination." If your initial review of the SBA 355 indicates the applicant (including its affiliates) is small under the applicable size standard, you will process the application for a COC. If the information is incomplete or if you cannot make a decision based on the available information, you should request that the contractor furnish additional information. If the additional information does not resolve the question of size eligibility or indicates that the business is other than small, the AD must initiate a formal size determination according to 13 CFR Part 121.1009. COC case processing will be placed in suspense and the CO so informed, until the formal size determination has been made.
- e. A business is ineligible for a COC if a formal SBA size determination finds the business other than small.

2. What COC Eligibility Rules Apply to Non-Manufacturers?

- a. A non-manufacturer making an offer on a small business set-aside for supplies must furnish end items manufactured in the United States by a small business. A waiver of the non-manufacturer's rule may be requested by the CO under 13

CFR Part 121.406(b)(1)(c) for either the type of product being bought or the specific contract at issue. The item must be manufactured domestically.

- b. A non-manufacturer making an offer on an unrestricted procurement or a procurement utilizing simplified acquisition threshold procedures with a cost not exceeding **\$25,000**, must furnish end items manufactured in the United States, its Territories, Possessions, or the Commonwealth of Puerto Rico.

3. What Rules Apply to Assemblers of Kits?

An offeror intending to provide a kit consisting of finished components or other components provided for a special purpose is eligible for a COC if:

- a. It meets the size standard for the SIC code assigned to the procurement;
- b. Each component of the kit was manufactured in the United States; and
- c. For a set-aside, a small business manufactured each component of the kit under the size standard applicable to the component provided unless the CO has received a waiver of this requirement under 13 CFR Part 121.406(b)(1)(c).

4. What Is the “Significant Portion” Requirement?

- a. A manufacturing, service, or construction business must show that it will perform a significant portion of the proposed contract with its own facilities, equipment, and personnel. A small business must perform the contract or manufacture the end item within the U.S.
- b. “Significant portion” is decided on a case-by-case basis. You must consider what portion of the contract the COC applicant will perform excluding profit.
- c. The “significant portion” eligibility requirement applies to unrestricted procurements and procurements conducted under the Simplified Acquisition Threshold (SAT) procedures. Procurements conducted over the SAT that are set aside for small business are subject to the requirements of the Limitations on Subcontracting clause. The Limitations on Subcontracting clause also applies to all 8(a) procurements and to unrestricted procurements where a small disadvantaged business (SDB) claims a 10 percent SDB preference.

5. What if the Applicant or Its Principals Are on the “Debarred List?”

- a. A business is not eligible for a COC if it or any of its principals appears in the “List of Parties Excluded from Federal Procurement or Nonprocurement Programs” published by the U.S. General Services Administration (GSA), Office of Acquisition Policy.
- b. If a principal is unable to presently control the applicant firm, and appears in the Procurement section of the list due to matters not directly related to the business itself, responsibility will be determined using paragraph 6 below.
- c. An eligibility determination will be made where the business or any of its principals appears in the Nonprocurement section of the publication referred to in paragraphs a. and b. above.
- d. The IS assigned to the case must check the “List of Parties Excluded from Federal Procurement or Nonprocurement Programs” before making any recommendation to issue a COC.

6. May SBA Presume a Firm to Be Non-Responsible?

Yes, in the following two circumstances:

- a. If, within 3 years before the application for a COC, the business, or any of its principals, has been convicted of (an) offense(s) that would constitute grounds for debarment or suspension under FAR subpart 9.4 and the matter is still under court jurisdiction (e.g., the principals are incarcerated, on probation or parole, or under a suspended sentence); or
- b. If, within 3 years before the application for a COC, the business or any of its principals has had a civil judgment entered against it or them for any reason that would constitute grounds for debarment or suspension under FAR subpart 9.4.

7. How Are the Prime Contractor Performance Requirements (Limitations on Subcontracting) Applied to the COC Program?

- a. To be awarded a full or partial small business set-aside contract conducted over the SAT, an 8(a) contract, or an unrestricted procurement where a firm has claimed a 10 percent SDB price evaluation preference, a small business must agree that:

- (1) When the contract is for services (except construction), the business will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;
 - (2) When the contract is for supplies or products (other than procurement from a non-manufacturer), the business will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials);
 - (3) When the contract is for general construction, the business will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and
 - (4) When the contract is for construction by special trade contractors, the business will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).
- b. Compliance is considered an element of responsibility and not a component of size eligibility. The period of time used to determine compliance will be the period of performance which the evaluating agency uses to evaluate the offer. If the agency fails to specify a time frame, the base period of the proposed contract will be used.
 - c. You don't count work to be performed by subsidiaries or affiliates of a business as work performed by the business for purposes of determining whether the business will perform the required percentage of work.
 - d. The following definitions are supplied for guidance when reviewing a small business for compliance to the requirements of paragraphs 2-7a(1) through 2-7a(4) above.
 - (1) Cost of the contract: All allowable direct costs allocable to the contract, excluding profit or fees.
 - (2) Cost of contract performance incurred for personnel: Includes direct labor costs, overhead that has only direct labor as its base, and the small business' General & Administrative rate multiplied by the labor cost.
 - (3) Cost of manufacturing: Those costs incurred by the small business in the production of the end item. These costs include the direct costs of fabrication, assembly or other production activities, and allocable and allowable indirect costs (e.g., inspection, testing, and project management). The costs of materials and the profit or fee from the contract are excluded from the cost of manufacturing.

- (4) Cost of materials: Includes the cost of purchasing, handling, and shipping for the materials. These include raw materials, “off-the-shelf items,” and similar high-cost common supply items that require additional manufacturing or incorporation to become end items. Materials may also include special tooling or special testing equipment, and construction equipment required and purchased for use on the contract.
- (5) Off-the-shelf item: An item produced and placed in stock by a business, or stocked by a distributor, before the contractor receives orders or contracts for its sale. The business may produce the item to commercial, military, or Federal specifications and descriptions. The term also refers to procurement of existing systems or equipment without a research, development, test, and evaluation program, or with only minor development to make the system suitable for Government needs. The item may already be in the Government’s inventory. Off-the-shelf items are also known as Nondevelopmental Items (NDI).
- (6) Personnel: Personnel has the same meaning as the term “employees” as found in 13 CFR Part 121.106.
- (7) Subcontracting: Subcontracting means that portions of the contract performed by a business other than the business awarded the contract under a second contract purchase order, or agreement for any parts, supplies, components, or subassemblies which are not available off-the-shelf, and which are manufactured in accordance with drawing, specifications, or designs furnished by the contractor, or by the Government as a portion of the solicitation. Raw castings, forgings, and moldings are considered as materials, not as subcontracting costs. Where the prime contractor has been directed by the Government to use any specific source for parts, supplies, components, subassemblies, or services, the costs associated with those purchases will be considered as part of the cost of materials, not subcontracting costs.

Chapter 3

Processing COC Referrals

1. When Must a Small Business Be Referred for COC Consideration?

The CO must refer a small business who is the apparent successful offeror on a solicitation and found non-responsible by a Government procurement agency, to SBA for COC consideration, according to 13 CFR Part 125.5 and FAR 19.6. The CO responsible for the procurement will send the referral to the AD serving the geographical area of the small business' corporate office.

2. What Does the Area Director Do When a COC Referral Is Received?

On the day the referral is received, the AD or designee will review the referral to ensure that all documentation required by FAR subpart 19.6 has been supplied. The referral will then be assigned to the COC supervisor.

3. What Does the COC Supervisor Do When Processing a COC Referral?

- a. The COC supervisor will review the referral documentation to ensure that it adequately supports the CO's determination of non-responsibility. An adequate referral should contain the following information, although the supervisor may consider some of the supporting information listed below as unnecessary in certain cases:
 - (1) Letter of referral;
 - (2) CO's determination and finding of non-responsibility;
 - (3) Copy of the solicitation;
 - (4) Copy of the offer submitted by the business whose responsibility is at issue for the procurement (its Best and Final Offer (BAFO) for a negotiated procurement);
 - (5) Abstract of Bids, where applicable, or the CO's Price Negotiation Memorandum;
 - (6) Copy of the pre-award survey of the plant facility report (if performed);

- (7) The specifications, technical data package, and drawings if given has part of the solicitation; and
 - (8) Any other information and documentation used to arrive at the non-responsibility determination.
- b. When reviewing referrals for research and development, or talent and creative ability cases, you should be flexible. Not all of the above documentation will be available.
- c. When reviewing a COC referral you should assume the following:
 - (1) The requirement exists;
 - (2) The offeror is responsive or in the competitive range and the offer will stay in effect throughout the COC processing period;
 - (3) In negotiated procurements, all negotiations are complete and the small business has made a BAFO that the CO will accept upon issuance of a COC;
 - (4) Funds are available and the CO will award the contract if SBA issues a COC;
 - (5) The referral will limit the COC to the maximum requirement of the solicitation (requirements contracts only); and
 - (6) The determination of non-responsibility is based on the current information available.
- d. You must, within 1 working day from receipt of an acceptable referral, try to contact the small business by telephone to determine if they want to file a COC application.
 - (1) Your discussions should concern:
 - (a) The small business' eligibility;
 - (b) Specific reasons for the CO's determination of non-responsibility;
 - (c) Production and financial aspects of the proposed procurement;
 - (d) Application instructions; and

(e) Post-contract award follow-up requirement.

(2) You should tell the small business that you will close the case if they fail to file the required forms and other information within the time limits specified. You should give the small business a reasonable time of not more than 6 workdays beginning the day after receipt of the referral to submit their application.

(3) You must not discourage applicants from applying for COCs.

(4) You should inform the small business that they can come to the office to pickup the COC application package. If this is not practical, SBA will send the package to the small business by overnight mail.

(5) If you cannot contact the small business by telephone within 1 working day, you must send the small business an application package by overnight mail.

e. When you determine that the referral is acceptable, you must send a letter (whenever possible a telephone call should precede the letter) to the CO indicating the following:

(1) SBA assumes the procuring agency has determined that all other elements of responsibility are satisfactory; and

(2) The 15-day processing period should be identified and confirmed.

4. How Does the COC Supervisor Prepare Control Records Using the “Certificate of Competency Automated Computer System “ (COCACS)?

a. When you receive an acceptable referral, you must immediately enter it into COCAS.

b. When you enter a referral into the system, the application date and expiration date are automatically computed and entered in the COCACS database (don't forget to use the Utility feature to update the yearly holiday dates). The system will assign 6 workdays, beginning the day after the referral, for the application, and 9 workdays after submission of the application for the completion date of the case.

c. The system allows you to select the identifying prefix as follows.

(1) For all capacity and/or credit referrals, use the prefix COC.

- (2) Tenacity and Perseverance cases, use the prefix TPC.
 - (3) For Integrity cases, use the prefix INT.
 - (4) If a case is for several elements such as Capacity, Credit, Tenacity & Perseverance (T&P), or Integrity, use the COC prefix; combine the elements and process the case accordingly. The applicant must be found responsible for all the elements to warrant an affirmative recommendation.
- d. The COCACS will automatically generate sequential COC case numbers. You must use the case numbers to identify the following:
- (1) SBA 106;
 - (2) Case file numbers;
 - (3) COC Control Log; and
 - (4) Case progress report form.
- e. Every referral is a separate case and receives a separate number even when one small business is referred simultaneously on more than one procurement.
- f. The COCACS automatically assigns a new number each time a case is added and you must not combine cases, but you should coordinate surveys.
- g. You will use this number throughout the life of the COC case.
- h. Within 10 workdays after the end of each month, you must send all transaction data (new cases and updated cases) to Headquarters for upload into the database. You may send this information via diskette, or E-Mail.
- i. You should print and place updated copies of SBA 106 in the COC case folders after each transaction.
- j. The area office may keep a hard copy of the COC control log as a backup to the COCACS.

5. What Do I Do When A Small Business Indicates That it Will File an Application for COC Consideration?

- a. When a small business says they will file for COC, the COC supervisor must do the following:
 - (1) When the referral is for T&P or Integrity you must notify the designated counsel that the applicant intends to file and provide them with copies of referral documents for their review (see chapter 5 for T&P referrals and chapter 6 for Integrity referrals).
 - (2) Send a letter to the small business requesting that they submit signed copies of the following SBA supplied forms:
 - (a) SBA Form 1531, “Application for Certificate of Competency;”
 - (b) SBA Form 355, “Application for Small Business Size Determination;”
 - (c) SBA Form 912, “Statement of Personal History” (for Integrity referrals only);
 - (d) SBA Form 74B, “Monthly Cash Flow;”
 - (e) Information requested by the “Application Instructions;” and
 - (f) Any additional information the small business considers necessary to show their ability to perform the solicitation requirements.

6. What Do I Do When a Small Business Indicates That it Will Not File an Application for COC?

When a small business says it won’t file an application for a COC, the COC supervisor must do the following:

- a. Send and/or FAX a letter to the small business confirming its decision not to file;
- b. Send and/or FAX a letter to the cognizant CO, stating that the small business declined to file for a COC (you should call the CO before sending the letter);

- c. Place copies of the letters sent to the small business and the CO in the case file; and
- d. Update the COCACS database.

7. What Must I Do When Closing a Case for Reasons Other Than a Small Business Declining to File?

- a. If any of the events listed below occur, the COC supervisor will close the case and immediately notify the AD, CO, and applicant. You must send a letter to the CO and applicant informing them that you closed the case. You may close a case in the following situations.
 - (1) The small business fails to file an acceptable COC application within specified time limits. See chapter 4 for elements of an acceptable application.
 - (2) The small business files an acceptable COC application, but the area office stops processing the application. For example, the applicant is not eligible for a COC because of:
 - (a) Ineligible small business status;
 - (b) Nonprofit organization status;
 - (c) Not performing a significant portion of the work; and
 - (d) Ineligible size.
 - (3) The referral is withdrawn by the CO and:
 - (a) The CO awards the contract directly to the applicant; or
 - (b) The CO awards the contract to another company; or
 - (c) The procurement is canceled.
- b. If the CO awards the contract to another company or withdraws the procurement (see (3)(b) or (3)(c)) above, notify Headquarters promptly, in writing, giving full particulars for such action. Headquarters may protest this action to higher authority.

- c. To close the case, enter the status data and reason for clearing the case as an update to the COCACS. You must give an explanation of these events in the “Comments” space provided.

8. How Long Do I Have to Process a COC Referral?

- a. You are allowed 15 workdays beginning with the first workday after receipt of an acceptable referral.
- b. You normally divide the process period into three phases:
 - (1) Six days for the small business to submit its COC application;
 - (2) Six days for the IS and financial specialist (FS) to perform surveys, analysis, and evaluations and make recommendations; and
 - (3) The remaining 3-day period is reserved for the COC Committee to review the complete COC package and make a final recommendation to the AD.
- c. If you require more than the allowed 15 days to process a case, you must contact the CO and request an extension to the completion date. If the CO denies the request, you may ask Headquarters for assistance. You must make memorandums of conversations with the CO and letters confirming extensions as part of the COC case file.
- d. You should try to process SBA Headquarters action cases in as short a time as possible. Headquarters should always have at least 5 workdays to complete their action. Area offices are responsible for obtaining extensions from the CO. You must send all case files to Headquarters using over-night express service.
- e. If, during the processing of a case in paragraph d above, the area office determines that issuing a COC may be in order, you will notify the CO and offer to discuss the case. If the CO asks for a meeting, or requests information in writing, you will suspend the 15-day processing period.

9. What Do I Do When More Than One Contractor Has Been Referred for the Same Solicitation?

- a. Notify the CO that you are only processing the referral for the offeror in line for award and that you are placing the other referral(s) on hold.

- b. SBA will process only one case at a time, following normal procedures.

10. How Are Research and Development, and Talent and Creative Ability Referrals Processed?

In cases where talent and creative ability in the sciences or arts are major elements on which proposals are evaluated, the procuring agency will first evaluate proposals based on the best approach to the problem. The COC procedure becomes applicable only after the procuring agency has made such an evaluation.

11. What Do I Do if a Small Business' Facilities, Major Small Business Suppliers, or Subcontractors Are Located Outside My Geographical Area of Responsibility?

- a. Any SBA area office may refer all or part of a case to another area office when the physical location of the small business place of performance, major supplier's performance, or subcontractor's performance can be more expeditiously evaluated there. For example: an area "A" contractor may bid and plan to perform a contract in its area "B" facility. Since all necessary information is in area "B," area "B" would logically handle processing and follow-up actions.
- b. Cognizant ADs or their designee must agree to decisions transferring cases from one area to another. The ADs should base decisions to transfer cases on the efficient use of time and resources. If you request another area to perform a secondary COC survey, you must do the following:
 - (1) Call the IS, or COC supervisor responsible for the geographical area of the small business and discuss your request for secondary COC survey; and
 - (2) Send a letter and COC case file to the cognizant IS requesting a secondary COC survey. The letter must state what areas of eligibility and/or responsibility you want evaluated.

Chapter 4

Processing COC Applications

1. Who Is Responsible for Surveying, Analyzing, and Evaluating a Small Business During the COC Process?

- a. In general, the COC IS is responsible for performing a COC survey. In offices where an IS is unavailable, the responsible COC supervisor with the AD's concurrence, may determine that an Office of Government Contracting (GC), Procurement Center Representative (PCR), or Commercial Market Representative (CMR) can perform the survey more expeditiously.
- b. The Chief, Financial Division (CFD), will assign an experienced district FS or loan officer (LO) to perform the financial review. If an FS is unavailable, the CFD must appoint another specialist to make the survey. COC cases must be completed within a specified time, therefore, the CFD must ensure the FS gives priority to the COC requirement and supports completion of the assignment within the time allowed by the COC supervisor or assigned IS (see SOP 50 10).
- c. The COC supervisor or assigned IS must coordinate the survey process. The supervisor will send case files containing survey reports and other pertinent information to the area COC review committee for its review and action.
- d. The designated size specialist will perform formal size determinations, when necessary, to determine small business eligibility according to 13 CFR Part 121.
- e. Counsel must advise and provide assistance on legal aspects of the COC Program. These aspects are eligibility, interpretation and effect of solicitation provisions, applicable principles of Government procurement law, and other legal questions arising in the development and processing of individual cases. Each COC case must contain a statement of legal sufficiency.

2. What Does the COC Supervisor Do When a Small Business Submits a COC Application?

- a. As the COC supervisor or the assigned IS, you must immediately review a small business' COC application for acceptability. A COC application is not acceptable unless a responsible executive, authorized to act on behalf of the small business in contractual matters, signs the required SBA forms. An acceptable application consists of signed copies of the following:

- (1) SBA 1531;
- (2) SBA 355;
- (3) SBA 912 (Integrity referrals only); and
- (4) SBA 74B (no signature required).

- b. If any of the above forms is missing, incomplete, or not signed, you must immediately contact the small business and tell them of the deficiency and arrange for them to submit any missing information or signatures. You should make every effort to obtain the needed information and signatures before taking any action to close a case.
- c. You must ensure that three COC case folders, containing identical information using SBA Form 594, "Approved COC Folder," are prepared and assembled (see appendix 2). The folders are divided into four sections, designed to separate data related to each phase of the case. Distribute one folder to each of the following.

- (1) COC specialist assigned to the case;
- (2) Legal counsel; and
- (3) Finance Division of the cognizant district office. This folder must include brief memorandum requesting a financial survey of the small business and the date you require the report. If the case is only for T&P or Integrity, you may not need this folder.

3. How Does the IS Begin the Survey and Analysis Process?

- a. You must begin the evaluation process by reviewing the:
 - (1) CO's referral information to determine the solicitation's requirements and the determination of non-responsibility; and
 - (2) Small business' COC application to evaluate how they propose to meet the requirements of the solicitation in terms of technical specifications, quality, quantity, and on-time delivery.
- b. During your review of the information, you should make notes of items that you want to discuss with the small business. Such items may be:
 - (1) CO's reason for finding the small business non-responsible;

- (2) How the small business will resolve the non-responsibility issues;
 - (3) Information that is not clear in the small business' application; and
 - (4) Points that you must discuss in the IS's "Narrative Report" (see appendix 3) and other pertinent information.
- c. You must determine if the small business is eligible to receive a COC, considering SBA COC policy and size standards according to 13 CFR Part 121. The AD may ask the size specialist to determine if the small business is "other than small."
 - d. If you find that a Government employee is the offeror, you should notify the CO. The CO, not SBA, determines the propriety of bids by Government employees (see FAR 3.601).
 - e. You must contact the small business to arrange a meeting with their managers and to conduct production surveys.

4. How Does the IS Analyze and Evaluate a Small Business' Capacity and Capability?

Your review and analysis of the COC will require, in most instances, an on-site survey of the small business' facilities and a review of the proposed contract requirements with representatives of the company. In certain instances (see paragraphs 4-10 and 4-11), the scope of a survey may be limited, or the on-site survey may be waived by the AD or COC supervisor. Where the scope of the review has not been limited, your review must include the requirements listed below and all other factors important to the successful completion of the contract. Typical items and documents you should review are:

- a. History and background of the small business and experience of their management;
- b. Availability of personnel, including part-time employees, with necessary technical skills required to perform the contract;
- c. Possession of, or the ability to obtain, the required specifications and drawings of the proposed product;
- d. Arrangements for obtaining more space and plant facilities if required;

- e. Possession of, or the ability to obtain, the required special tools, dies, gauges, jigs, fixtures, and test equipment;
- f. Plans for placements of orders for materials, equipment, supplies, services or subcontracting, and suitability of quoted delivery schedules;
- g. Availability of necessary supplies, materials, parts, and subcontracting;
- h. Applicability and quantity of inventory for use on the proposed contract;
- i. Capability of the small business to meet the solicitation's quality assurance and inspection requirements;
- j. The small business' plant loading and status of their current contracts;
- k. The small business' production schedule and planning for the proposed contract (include an analysis of items a through j above, and their capability to meet the solicitation's requirements);
- l. First Article or first piece submissions and Contract Data Requirements List (CARL) requirements and other pre-production or pre-performance requirements to determine the feasibility of the production and performance plan;
- m. Past performance on Government and/or commercial contracts for similar or identical items;
- n. You should evaluate current and past performance on COC contracts;
- o. Cost analysis and price build-ups; and
- p. See appendix 4 for a list of standard supporting items which can be used as attachments.

5. What is Required in the Industrial Specialist's Analysis and Evaluation Report?

- a. As the IS, you must prepare clear, complete and comprehensive reports that describe a small business' capability and capacity to meet a proposed contract's requirements. You must make sure SBA Form 1531, "Application for Certificate of Competency," is completed. You must also prepare a "Narrative Report," using the suggested format of appendix 3. The same forms and reports must be placed in each of the three COC cases files.

- b. The detail of information you provide on the SBA 1531 will vary with the circumstances. Your narrative report will supplement these forms and you should use it to expand or more clearly explain the COC case. You should make comments on the forms if the reader should see your narrative report for details.
- c. Your narrative report must fully develop all pertinent factors, both favorable and unfavorable, relating to the small business' capability and capacity. You must present unusual circumstances in detail. Your report must be independent of reports and findings of any other Government agencies. It must not become a rebuttal of a survey or report prepared by or for the procuring agency. However, you must consider information provided with the COC referral and should comment on it in the narrative report. Your narrative report should discuss the CO's negative findings and determination and/or concerns.
- d. Your narrative report must conclude with a summary of your findings and a recommendation to either issue or deny the COC. A recommendation for issuance of a COC must state that the small business will meet the quantity, quality, delivery dates, and other requirements specified in the solicitation. See appendices 3 and 4 for guidance in preparing a narrative report.
- e. Your narrative report is the most important part of the survey, since it is the basis of the presentation of the case in area COC review committee meetings. The facts given in your report must support your recommendation to the committee. The committee will rely heavily on the information you have developed in your narrative report to form its recommendation to the AD to issue or deny the COC. This information will in turn form the basis for the AD's action to issue or deny a COC.
- f. Your narrative report and/or forms should discuss the following.
 - (1) The specific contract requirements should be stated under item 9 of SBA 1531.
 - (2) Whether the procurement is a small business set-aside, and whether the referral covers the non set-aside portion, the set-aside portion, or both.
 - (3) The amount and nature of bonds, if required, and the terms of any applicable penalty clauses (i.e., liquidated damages, etc.).
 - (4) Reference checks (item 11, SBA 1531) with the small business' principal civilian and Government customers to determine its performance history. If this involves several businesses, contacting all principal customers may not be practicable. You should report

information obtained from your contact as stated and not your opinion. You may request letters to support the evaluation when practicable. When you verify performance by phone, list the company, the contact's name, and the telephone number.

- (5) Principal supplies and subcontractors including, if available, alternate sources. Copies of recent proposals or quotations (dated within 30 days of the COC application) are usually suitable evidence that the small business has set up satisfactory sources. Where the quotation is unclear or beyond the 30-day period, you must verify the quotation with the vendor. This procedure also applies to quotations from major subcontractors. Your verbal confirmation with sources on the availability of "stock items" is acceptable. However, you must confirm in writing long lead-time or critical items that must be manufactured or made to order. In the case of a non-manufacturer, you must note all manufactures of products to be furnished. Your report should state how you verified the quotations. An acceptable quotation should contain:
 - (a) Delivery time;
 - (b) Quantity to be supplied;
 - (c) Specification under which the item will be produced; and
 - (d) Terms of payment. You should note credit terms offered by suppliers and discuss them with the FS.
- (6) Whether the small business intends to subcontract a substantial or critical part of the work or perform the contract as a joint venture. If necessary, you should inspect the plant and facilities of the proposed subcontractor or joint contractor. You should discuss this with the AD or COC supervisor and decided which contractor's plant(s) to inspect and which aspects of the (plant)s to survey. You will require a secondary COC survey, discussed in paragraph 3-11, if the other facilities are outside your geographical area of responsibility.
- (7) Subcontractor surveys should only be performed when you are concerned about either a program eligibility issue (e.g., set-aside small business dealer is to supply the product of a small business manufacturer, or a performance capability issue). You are reminded that SBA does not assess the capability of large businesses. Subcontract agreements should be in writing and a copy included in the case file. Where an on-site survey is not performed, you should contact the large or small business subcontractor to verify that the items or

services to be supplied are in conformance with the requirements of the solicitation.

- (8) Your report must address the impact of current and anticipated contracts on the COC. The dollar value of the total undelivered dollar backlog must be stated. All current work must be shown on SBA 1531, item 18, showing each contract separately. Particular attention should be given to portraying the capacity of the plant to carry the projected load, including the proposed COC contract. Plant load charts and scheduling plans for the COC contract should be furnished by the small business where the detail required for proper analysis cannot be adequately shown on SBA 1531. The company's cash flow and production plan should agree.
- (9) Management depth, experience, background, capability, and record of the personnel who will be responsible for performance.
- (10) Performance on contracts under a current or past COC.
- (11) Photographs which show the small business' (SB) facilities, equipment, products, process, or any other important item if available.
- (12) Assembly and important detail drawings if available. A complete set of drawings is not necessary for most evaluations.

6. How Should the Industrial Specialist Assist the Financial Specialist?

- a. You must give assistance and information to the FS as requested. Information that you may review with the FS will vary with each case. The following are examples of items that may help the FS determine the SB's financial capability:
 - (1) Availability of progress payments;
 - (2) Confirmation of the production schedule;
 - (3) Status of work in progress;
 - (4) Review of cash flow projections against production plan; and/or
 - (5) Confirmation of inventory on hand and its allocation to the contract.
- b. You should also help the FS in correlating SBA Form 1531, "Application for Certificate of Competency," with SBA Form 74B, "Cash Flow Projection," to arrive at a realistic evaluation of the small business' equipment, facilities, and work in progress if these items are subject to any financial issue.

7. How Does the Financial Specialist Determine a Small Business' Financial Capability?

- a. COC cases are time sensitive and as the assigned FS you must give first priority to COC process requirements. You must make sure that the reports are given to the assigned IS or COC supervisor by the date requested. If you need more time to complete your survey and evaluation, you may ask the COC supervisor or assigned IS to seek an extension of the case completion date. However, only the referring agency's CO COC may extend the completion date of a COC.
- b. The FS must promptly review the COC application and its financial enclosures, and decide if there is enough data to determine the small business' financial capability. If your initial review of the information reveals it is deficient, you must immediately bring this to the small business' attention and give it the opportunity to correct the deficiency in a timely fashion. The FS should notify the AD or COC supervisor if this situation arises.
- c. The FS cannot reject a COC application; only the AD or COC supervisor may decide that a COC application is unacceptable. However, the FS may recommend denial of a COC where a small business failed to submit requested information.
- d. When necessary, the FS should visit the small business' facility to develop all financial aspects of the case. This would include inspecting inventory, work in progress, and reviewing the cash flow projections for the total workload, as well as for the proposed COC contract with company management.
- e. The AD or COC supervisor, in consultation with the CFD, may waive the plant visit if any of the following apply:
 - (1) The referral was not for lack of credit and you have conclusive evidence on file that the financial condition of the small business is sound;
 - (2) A site visit was recently performed and resulted in a positive recommendation and the instant solicitation does not exceed the value; and
 - (3) Performing a site visit will serve no useful purpose (see paragraph 4-11).

- f. If the dollar value of the procurement under consideration is insignificant compared with the COC under review, the AD or COC supervisor may waive the cash flow projection for the procurement. However, the total cash flow projection covering the contract period should not be waived. A waiver signed by either the AD or COC supervisor must be included in the COC case folder.
- g. The FS must determine if Government financing in the form of progress or advance payments may be made available to the small business.
- h. If a bank or other financial institution is to provide financing for the contract, the small business should obtain a letter from that institution setting forth the details of the contemplated financing. Bank letters of credit must state the credit to be extended by specifically identifying the proposed contract by Invitation for Bid (IFB) or Request for Proposals (RFP) number.
- i. If the small business proposes to use a non-bank lender for financing on the contract, financial statements of the non-bank lender must be supplied by the COC applicant. The information has a direct bearing on SBA's evaluation of the COC application.
- j. In those cases where an SBA loan is considered, the processing of the loan request should begin immediately upon receipt of referral for a COC. The processing of the loan must be completed within the COC process period, as the decision on the loan request may determine whether the AD will approve or deny the COC (see SOP 50 10).

8. What Should the Financial Specialist's Report Contain?

- a. As an FS you should analyze the overall condition of the current balance sheet of the small business and reconcile the net worth account. You should make adjustments when required such as elimination of intangible assets, reclassification of current assets/liabilities to long term status, and payoff arrangements with Federal/State authorities. If possible, you should verify this by telephone with the parties concerned.
- b. You should calculate key financial ratios such as: current, quick, debt to net worth, and sales to working capital.
- c. You should verify current cash position, average cash balance, line of credit availability/terms and payment history on existing notes payable with the small business' bank. You should provide the name and telephone number of each person you have contacted. If the small business is utilizing a non-bank lender, ensure that the financial statements of that lender are included in the case file.

- d. You should analyze the condition of accounts receivable and accounts payable. You should provide comments on any unusual circumstances; special or extended terms of payment; the ability of the applicant to collect on overdue accounts receivable; and discuss reasons for late payables.
- e. You should analyze the small business' current and prior years' profit and loss statements and comment on any positive or negative trends, and comment on any actions taken by the small business to reverse any negative trends.
- f. You should review the cash flow projections (instant and total) and discuss the following:
 - (1) Conformity with contract price build-up (part of capacity submission) and explain any significant discrepancies;
 - (2) Appropriate collection of accounts receivable and progress payments and the proposed contract (should agree with production plan);
 - (3) Appropriate collection of all other accounts receivable given the status and projected shipments of existing contracts and orders;
 - (4) Reasonableness of starting cash position given factors developed in paragraph 4-8a above;
 - (5) Correct draw down and repayment of any credit lines to support the workload; and
 - (6) Adequate disbursements to cover payment of term loans, capital acquisitions, tax obligations, and general and administrative expenses.
- g. You should summarize your overall findings on the applicant's ability to support the proposed contract and existing workload from a financial standpoint. Your recommendation must be based on a logical analysis of all factors reviewed.
- h. You should keep in mind the following on each review you conduct:
 - (1) Maintain contact with the IS processing the case. He/She can provide information on progress payment availability, production planning, performance on current work, and costs of material/subcontracted work and terms of payment. All of these factors have an effect on our analysis of cash flow projections.

- (2) It is the small business' responsibility to demonstrate financial ability to perform. It is SBA's responsibility to review all information provided with the application and any additional information submitted during the review time frame. Any problems or discrepancies should be discussed with the applicant to obtain an explanation or allow for correction.

9. Can the IS or FS Recommend a Partial Award of a Contract?

- a. Yes, both the IS and FS can recommend a partial award provided:
 - (1) The solicitation has a provision which allows for the contract award method; and
 - (2) The small business has the capability to perform at the anticipated reduced level.
- b. The FS and IS should consult with one another where either anticipates this type of recommendation. Items specifically set aside for small business will be recommended first.

10. Can the Scope of a COC Review Be Limited?

Yes, the COC supervisor, with the written approval of the AD, may limit the scope of the survey to the specific area(s) of responsibility determined unsatisfactory by the CO within the specified dollar limitations listed below.

- a. Less than \$100,000 - The COC survey will be limited to only the area(s) of concern identified by the CO. The COC supervisor must supply a written justification for expanding the COC review beyond the CO's concerns.
- b. Between \$100,000 and \$2 million - The COC supervisor with the AD may limit the scope of the IS's review to the area(s) of non-responsibility identified by the CO. A justification to limit the scope of the survey will be prepared by the supervisor for the AD's signature and will be included in the COC case file.
- c. Between \$2 million and \$5 million - The AD may limit the scope of the IS's review to the area(s) of non-responsibility identified by the CO. A justification to limit the scope of the survey will be prepared by the AD and will be included in the COC case file.
- d. More than \$5 million - On all referrals except Integrity, a full capacity and credit review must be performed.

11. Can a Field Visit Be Waived?

Yes, the AD or COC supervisor, with AD's written concurrence, can waive certain IS and FS field visits. A signed memo must be included in the case file explaining why a field visit would not be productive. Sole discretion for a waiver rests with the AD. The following guidelines for waiving an on site visit are provided below.

- a. When the referral is for credit and there is documentation to show that the small business has the capacity to perform, or when the referral is for capacity and there is enough documentation to show that the small business is financially responsible.
- b. When the solicitation is for a service or construction contract and is to be performed at a Government facility and the small business operates from an administrative office. However, a field visit to the Government facility where the actual performance will take place should be considered.
- c. For timber sales and related types of contract because timber cutting, planting, and surveying is usually done by a few people who often do not have an office.
- d. When the small business has been recently visited because of an earlier COC referral and you are not likely to obtain new information.

Chapter 5

Processing Tenacity and Perseverance Cases

1. When Is a COC Referral Based on Tenacity and Perseverance (T&P)?

T&P referrals are when a business is non-responsible because it fails to apply the necessary effort to do an acceptable job and when a lack of capacity or credit does not cause the failure.

2. What Must a T&P Referral Contain to Be Acceptable to SBA?

A T&P referral must specifically identify the basis of the CO's determination that poor performance was not the result of a lack of capacity or credit. To sustain a non-responsibility determination based on lack of T&P, the referral package must clearly show that the small business did not diligently and aggressively take whatever action was reasonably necessary to resolve its problems. The referral is incomplete and unacceptable when the CO does not support the determination with adequate evidence. The IS, with help from SBA counsel, must determine whether the CO provided adequate evidence to support the T&P determination. You may need to call the CO to make sure that all relevant information was supplied.

3. What Are the Procedures for Processing T&P Referrals and Applications?

When you determine the referral is acceptable, you must process it according to chapter 3. After receipt of an application, you will process it according to chapter 4.

4. What Does Certification as to T&P Mean?

Certification as to T&P means that the small business has shown SBA that it has and will use the necessary persistence and steadfast pursuit to do an acceptable job on the contract in question.

Chapter 6

Processing Integrity Cases

1. What Is a COC Referral Based on Lack of Integrity?

Referrals for lack of integrity generally involve circumstances where a business or its principals were convicted or indicted for criminal offenses or are under investigation for such offenses. Referral may also be based on actions which are not criminal offenses but which indicate unethical or dishonest behavior, such as violation of Federal labor laws or Federal or State laws against environmental pollution.

2. What Is an Acceptable Referral for Lack of Integrity?

- a. The CO must support the determination of non-responsibility due to lack of integrity by including substantial evidence in the referral package. If the CO does not include this evidence, you will consider the referral incomplete and unacceptable. Upon completion of the initial review (see paragraph 6-5a), you will inform the CO of any shortcomings and give the CO an opportunity to provide more documentation. You will place the referral in suspense for 5 working days or until you receive adequate documentation.
- b. A reference to an agency or FBI investigative report is not sufficient documentation. The report itself should be provided. In cases where the report cannot be disclosed, a summary with conclusions of the sections pertaining to the integrity referral is required.
- c. **“Substantial evidence** means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consolidated Edison Co, v. NLRB*, 305 U.S. 197, 229 (1938). The Supreme Court has also stated that substantial evidence “means evidence which is substantial, that is, affording a substantial basis of fact from which the fact and issue can be reasonably inferred...it must be enough to justify, if the trial were to a jury, the refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.” *NLRB v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300 (1939).

3. May I Release the Adverse Information to the Business?

- a. You will inform the CO that SBA will make information given to SBA to support the finding of lack of integrity available to the small business within the limitations of paragraph 6-4a(2) below. If the CO will not allow release of the relevant information to the business, you must notify the CO that SBA will proceed to issue a COC. **NOTE:** Release of the information does not mean opening the file to the business. It is only necessary to give the business an understanding of the substance of the allegations or charges.
- b. This may be done if the CO will allow SBA to summarize or paraphrase the allegations or charges. In the case of an indictment, a copy of indictment or citation of the indictment number and list of charged offenses is adequate. In the case of conviction, a citation to the particulars of the conviction is adequate.

4. What Are the Procedures for Processing Integrity Referrals and Applications?

The following procedures apply when the referral is for integrity only and you combine them with the procedures of chapters 4 and 5, as appropriate, when other elements of responsibility or eligibility are included in the referral.

- a. Review . Upon receipt of an integrity referral and before notifying the business, the IS must review the referral package with area counsel. This review will determine if:
 - (1) The determination by the procuring agency is supported by substantial evidence in the files;
 - (2) Documentation is complete (see paragraph 6-2b);
 - (3) Allegations are timely (generally actions more than 3 years old are untimely, however, you should consider any conduct that is continuous in nature, characteristic of a firm's activities or part of a pattern, or which bears upon the firm's present responsibility); and
 - (4) The evidence submitted related to the charges made in the referral.
- b. Acceptable Referral . When you determine the referral is acceptable, you must process it according to paragraph 3-3.
- c. Application . After receipt of an application, you will process it according to paragraph 4-2.

- d. Area Counsel's Report. Integrity cases require the involvement of counsel in the details of the case and its processing. The IS and counsel may need to contact the U.S. Attorney, the FBI, or other law enforcement agencies. Counsel must prepare a report to the COC Committee chairperson reviewing the case from a legal standpoint and discussing any relevant litigation or ongoing investigations. Counsel must give an opinion on the legal sufficiency of the evidence to support issuance or denial of the COC.
- e. Policy Guidance. Although it is not possible to prescribe precise rules for determining a firm's integrity, the following guidelines apply.
 - (1) Debarment and Suspension. Businesses or principals of the business who are on the debarred or suspended bidder list are ineligible for COC assistance.
 - (2) Convictions. Businesses or principals of the business as defined by FAR 9.403 convicted of offense that would be grounds for debarment or suspension (see FAR 9.406-2 and 9.407-2) and are under court jurisdiction (for probation, parole, or incarceration) are ineligible for COC assistance.
 - (a) You will consider conviction of a business or its principals (as defined in FAR 9.403), or the entry of a civil judgment within the past 3 years for any offense that would constitute grounds for suspension or debarment under FAR (see 9.406-2 and 9.407-2) adequate evidence of a lack of integrity. In all such cases, you will not make a decision on the COC application until you review the firm's response.
 - (b) You will consider the convictions or civil judgments that occurred more than 3 years before the COC referral on a case-by-case basis. You must weigh the nature and seriousness of the offenses and evaluate them in light of the firm's present responsibility and any remedial actions taken by the firm to prevent recurrences.
 - (3) Indictments. The Comptroller General has held that a grand jury indictment is an adequate basis for determination of lack of integrity by a procuring agency. Indictments are thus an adequate basis for SBA to decline a COC. You will consider an indictment of a business or its principals (as defined in FAR 9.405 (e)) for any offense that is grounds for debarment or suspension as adequate evidence of lack of integrity.

- (a) You will review indictments of a business or its principals for other offenses on a case-by case basis to evaluate their bearing on the firm's responsibility to perform Government contracts.
- (b) Where possible, the CO should provide SBA with a copy of the indictment. If this is not feasible, the CO should provide the details (i.e., indictment number, court, persons and entities named, and offenses charged) along with a statement of the factual allegations of the indictment.
- (c) You should make a decision to issue a COC to an indicted business only after review of the business' application. The area counsel must concur in any decision to award a COC to an indicted business or a business whose principals are under indictment. The area counsel must prepare a written justification for the file.
- (4) Investigations. Just because a business is under investigation is not a conclusive indicator of a lack of integrity. However, depending upon the stage of the investigation, facts tending to show the business committed fraud or other wrongdoing may be used as a basis for a finding of a lack of integrity. The extent to which such information can be made available to SBA and the extent to which the firm can respond, will be taken into consideration in SBA's final decision to issue or deny the COC.

5. When Should the SBA Office of Inspector General Be Notified When a Small Business or Its Principals Are Referred for Lack of Integrity?

Once a completed SBA 912 (the form) is received from the COC applicant, the supervisory IS will prepare a brief a cover memorandum to the SBA Office of Inspector General, Security Branch Chief, SBA Headquarters, Washington, DC 20416, containing the following:

- a. That the form is being forwarded for processing in reference to an application for a Certificate of Competency;
- b. A brief statement concerning the referred issue of integrity;
- c. A request for any information concerning any current or prior investigations being conducted by the IG on the applicant; and
- d. The name and telephone number of a contact at the area office.

6. What Does Certification as to Integrity Mean?

Certification of integrity means that the referring agency has not provided substantial evidence to support the determination of non-responsibility due to a lack of integrity.

Chapter 7

Area COC Review Committee and Area Office Actions

1. Who Is on the Area Review Committee?

The AD for GC will appoint an area COC review committee. The supervisory IS or the AD's appointee will chair the committee. The committee must consist of the chairperson, and the following voting members:

- a. A COC IS familiar with the case, preferably the IS who evaluated the business;
- b. The CFD or person acting in that capacity when appointed by the DD; and
- c. Area counsel.

2. What Does the Area Review Committee Do?

The area review committee must review COC cases and recommend to the AD, whether to issue or decline to issue COCs. Before making a recommendation the committee must do the following.

- a. Meet to discuss and evaluate the COC case.
 - (1) The chairperson must call committee meetings, preside at the meeting, and send a written recommendation to the AD.
 - (2) The IS, or someone designated to represent the IS, will present the capacity side of the case. If the IS who conducted the capacity analysis cannot take part in the meeting and the committee recommends to reverse the IS recommendation, the chairperson should give the IS the opportunity to support the recommendation. This will be done through an addendum written by the evaluator as a supplement to the IS's original report. The addendum will be specific as to the facts and details leading to the revised recommendation.
 - (3) The CFD will present the district LO's financial analysis and report. The report and supporting documentation must be according to appendix 5 of this SOP and SOP 50 10. The CFD or designee must make sure the LO's report is sufficient to support the recommendation to issue or deny the COC. The district LO preparing the financial analysis should present the case, even if by telephone. If the committee

disagrees with the LO's recommendation, the committee chairperson should inform him/her of the reasons and give the LO the opportunity to respond.

- (4) Counsel will determine the legal sufficiency to support the COC committee's proposed action and will include a signed statement for inclusion in the case file.
- (5) The committee chairman will designate someone to :
 - (a) Notify members of the date, time, and place of the meeting;
 - (b) Prepare and retain a summary of the committee meeting, including a summary of reasons for the committee's recommendation, and any dissent by a committee member; and
 - (c) Prepare and send appropriate letters issuing or denying the COC application. These letters must identify the procurement and, in the case of a partial set-aside, specifically say whether the certification includes both the reserved and unreserved parts. When the AD issues a COC for only a selected number of referred items, the letter of issuance must clearly spell out the certified items. For requirements type contracts, the letters of issuance may limit the COC to the maximum requirement specified in the solicitation.
- (6) Make a written recommendation to the AD. A committee member who does not agree with a proposed recommendation must give the reasons, in writing, to the chairperson. The chairperson will send the committee's recommendation and any written dissenting opinion to the AD for final decision.
- (7) None of the committee members can act in more than one capacity. For example, the chairperson of the committee cannot issue or deny a COC by signing for the AD.

3. Is an Alternate Method of Processing COCs Through the Area Director Available?

ADs, at their discretion, may authorize the following alternate method of processing a COC.

- a. All COC cases between \$100,000 and \$5 million with positive recommendation(s) from the IS and/or FS will be processed as follows.

- (1) Sufficient time will be set aside prior to the expiration date of the COC to allow the supervisor IS (or designated COC committee chair) to review and discuss (in person or by telephone) the results of the IS and/or FS report(s) (with CFD concurrence) with each individual(s).
 - (2) If the supervisor agrees with the recommendation(s), he/she must prepare a brief summary confirming his/her agreement, place the summary in the COC case file, and forward the case to counsel for a memorandum of legal sufficiency. The file will then be forwarded to the AD for final action.
 - (3) If the supervisor cannot concur with the IS's and/or FS's recommendation to issue a COC, a formal COC review committee meeting must be held in accordance with paragraph 7-2 of this SOP. This also applies where the CFD cannot concur with the FS's positive recommendation.
- b. All COC cases less than \$100,000, with a positive recommendation(s), will be processed as follows.
- (1) After the IS and/or FS report(s) is completed and recommendation for COC issuance is made, the COC case production file will be forwarded to the supervisory IS for review and concurrence.
 - (2) If the supervisor concurs, legal sufficiency will be obtained and the COC case will be forwarded to the AD for review and a final decision.
 - (3) If the supervisor disagrees and the issues cannot be resolved, a formal COC review committee meeting will be held in accordance with this SOP.
- c. All COC cases with negative recommendation(s) from the IS, FS, and/or counsel, and all Integrity and T&P cases will be processed through a formal COC review committee.
- d. All COC cases more than \$5 million will be processed through the formal COC review committee per this SOP.
- e. The AD or designee has the authority to request a financial review by the SBA Capital Access (CA) Office for any dollar value COC described above, on a case-by-case basis. This may be required on a firm with little or no previous COC history and/or with obvious financial weaknesses and deficiencies.

4. What Does the Area Director Do With the Committee Recommendation?

After reviewing the recommendation of the COC Review Committee the AD may do the following.

- a. Propose to issue a COC within delegated authority.
 - (1) The AD or designee will contact the CO by telephone to discuss the reasons why SBA proposes to issue the COC and give CO the following options.
 - (a) Accept the AD's decision to issue the COC. If the CO agrees, the case file will be documented with a memorandum of the conversation. The AD will issue the COC, including as an attachment a detailed rationale for the decision.
 - (b) Ask the AD to place the case in suspense for a mutually agreed upon time. The AD will forward SBA's detailed rationale supporting issuance of the COC to the CO for review.
 - (c) Ask the AD to place the case in suspense for a mutually agreed upon time to allow the CO or his/her representatives to meet with the AD's staff. The meeting will allow the CO to review all documentation contained in the case file. The AD will not release the case file outside SBA.
 - (d) Give the CO an opportunity to submit new information for the area COC review committee to consider. If the CO submits additional information, the SBA and the CO will set up a new mutually agreeable suspense date for COC completion. Normally this new suspense date will be no more than 5 workdays.
 - (e) Where a resolution cannot be reached in (b), (c), or (d) above, place the case in suspense while the CO submits a formal appeal to SBA Headquarters. The AD must send the case to SBA Headquarters for review and final action even if within delegated authority.
 - (2) A CO cannot appeal an AD's decision to issue a COC less than \$100,000 to SBA Headquarters. Where the AD proposes to issue a COC and the CO disagrees, every effort must be made to resolve the disagreement in accordance with (b) and (c) above. However, the final decision to issue a COC rests with the AD.

(3) If the CO chooses (1)(b), (1)(c), (1)(d) above and submits information adverse to the responsibility of the applicant, the AD may recall the COC review committee to reconsider its original recommendation to issue the COC. The AD should allow the applicant the opportunity to respond to any allegations before the committee meetings. The committee will prepare a supplement to the summary of the original meetings that reflects the latest recommendation.

(4) If the AD does not concur with the committee's recommendation, he/she must justify his/her decision in writing, consistent with the issues.

b. Decline to issue a COC.

c. Recommend to Headquarters that a COC be issued if the procurement is more than \$25 million, or if the CO is appealing the decision to issue a COC.

(1) COC cases submitted to Headquarters must be complete and prepared in triplicate. Each file must include a statement about size and eligibility with the area COC review committee meeting summary and recommendation.

(a) The first file is for the Office of Industrial Assistance (OIA) and it will contain the original statement, summary and recommendation.

(b) The second file is for the Associate Administrator for Financial Assistance (AA/FA).

(c) The third will be retained by the area office.

5. When Must the Area Director Notify Headquarters Upon Receiving a COC Application?

Some COCs require special handling and the area office must notify the OIA in circumstances when:

- a. The contract value, excluding options, is more than \$25 million;
- b. The application has three or more active COC contracts;
- c. The COC referral alleges the applicant lacks integrity;

- d. The procurement is for a Small Business Innovative Research (SBIR) solicitation; and/or
- e. The procurement is for food, drug, pharmaceutical, medical, chemical, or biological items taken or used internally or applied to the skin.

6. Who Must the Area Director Notify of the COC Decision?

Immediately following the signing of a letter of issuance or declination, the AD or his/her designee must notify the following.

- a. Contracting officer. Notify the CO by telephone or FAX and confirm with a letter sent by certified mail.
- b. Business submitting the application. If you notified the CO by telephone or FAX, you must notify the SB by telephone or FAX and then confirm with a letter.
 - (1) If you issue a COC, the letter should state whether the area office or Headquarters made the decision to issue the COC. It should remind the business of its obligation to cooperate with SBA on follow-ups, including plant visits to review progress on the contract. It should also remind the business of the importance of keeping the certified contract and any other Government work on schedule.
 - (2) If a COC was declined, you must state specific reasons for denial and tell the business that it may request a meeting with SBA to discuss the reasons for denial. You should clearly explain that the purpose of the meeting is to enable the business to improve or correct the deficiencies or problems for the future. The meeting is not a basis for reopening the case. You should send a copy of this letter to the CO.
- c. The originating area office will be sent a copy of the issuing or declining letter, if other than the processing office.

Chapter 8

Responsibilities of SBA Offices and Headquarters

1. What Is the Role of the Office of Industrial Assistance?

The OIA will:

- a. Review all COC case files referred to Headquarters, either on appeal or a final action, to determine an applicant's capability and eligibility to perform the proposed contract according to its terms;
- b. Obtain additional information, if necessary directly from SBA area offices and from sources within or outside the Government;
- c. Conduct independent surveys when appropriate; and
- d. Prepare a summary and a recommendation on whether to issue or decline to issue the COC to the chairperson or the COC review committee and the Associate Administrator for Government Contracting (AA/GC). Include the summary and recommendation in the AD when the recommendation in the case file.
- e. Review the summary and recommendation with the AD when the recommendation disagrees with the area office.

2. What Is the Role of the Office of Economic Development?

The FS or LO assigned to the case analyzes all financial information about the applicant. The LO must prepare a report on the case about the applicant's financial ability to perform the proposed contract. Then the LO's report and recommendation become part of the case file.

3. What Is the Role of the Office of General Law?

The Office of General Law provides legal advice on all aspects of the COC Program, including eligibility and size. An attorney in the office reviews each file to determine its legal sufficiency to support approval or declination of the application.

4. When Does SBA Headquarters Decide COC Applications?

SBA Headquarters decides COC applications in the following two circumstances.

- a. When the value of the contract is more than \$25 million, only the AA/GC has the delegated authority to issue a COC. The AA/GC may issue or decline COCs regardless of the nature of the case or its total dollar value.
- b. When the value of the contract is more than \$100,000, and the CO appeals an AD's decision to issue a COC.

5. Who Is on the Headquarters COC Review Committee?

The Assistant Administrator, Office of Industrial Assistance (AA/OIA), is the chairperson of the COC committee. The following are also members of the committee.

- a. A representative of the Director, Office of Loan Programs. The committee may not require this person for T&P cases, Integrity cases, and cases not referred for credit.
- b. An attorney representing the Associate General Counsel, Office of General Law.
- c. COC Program manager or designee.

6. What Is the Role of the COC Review Committee?

- a. The COC review committee will review the case files and any other information applicable to making a recommendation to the Chairperson.
- b. The Chairperson will send the file and committee recommendation with any non-concurrence to the AA/GC.

7. How Does SBA Headquarters Handle COC Appeals?

- a. An SBA area office must honor a request to appeal a COC if the CO agrees to withhold award of a contract until the appeal process is concluded. Without this agreement, the AD must issue the COC. Once this agreement is reached, send the case file to SBA Headquarters.

- b. The intent of the appeal procedure is to allow the contracting agency the opportunity to submit to SBA Headquarters any documentation that the area office feels may not have been fully considered.
 - c. SBA's OIA will give written notice to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), at the secretariat level of the contracting agency (with a copy to the CO) that the case file has been received and that an appeal decision may be requested by an authorized official at that level. If the contracting agency decides to file an appeal, it must notify SBA's OIA. This notice will be through its Director, OSDBU, within 10 working days (or a time agreed to by both agencies) of its receipt of written notice from SBA. The director must file the appeal and supporting documentation within 10 working days after SBA receives the request for a formal appeal (or a time agreed to by both agencies).
 - d. The AA/GC will make a decision to issue or deny the COC. The AA/GC will make the decision in writing and send a copy to the AD.
- 8. How Does SBA Headquarters Make Decisions on COCs Where the Contract Value Is More Than \$25 Million?**
- a. Before taking final action, SBA Headquarters will contact the contracting agency at the secretariat level or equivalent and offer the following options:
 - (1) The agency can meet with SBA Headquarters staff and review documentation in the case file. SBA will suspend processing the case until after the review; or
 - (2) The agency can send any additional information to SBA Headquarters for evaluation they think hasn't been considered. However, agencies are encouraged to first submit this information to the AD for consideration.
 - b. After reviewing all available information, the AA/GC will make a final decision to issue or deny the COC. If the AA/GC's decision is to deny the COC, the area office will inform the applicant and contracting agency in writing. If the AA/GC's decision is to issue the COC, SBA Headquarters will send a letter certifying the firm's responsibility to the contracting agency and the area office. The area office will inform the applicant of SBA Headquarters' decision. There is no further appeal or reconsideration of the AA/GC's decision except in those instances where SBA decides to reconsider according to the procedures stated in this SOP.

9. When Will Headquarters Conduct an Area Office Review?

The OIA will make periodic field reviews of operations and case files to evaluate compliance with this SOP.

Chapter 9

COC Follow-up Procedures

1. What Are the First Steps After a COC Has Been Issued?

- a. After the COC is issued, the COC supervisor or assigned IS must contact the small business or CO and obtain the following information:
 - (1) Contract number;
 - (2) Date of contract award; and
 - (3) Dollar amount of the contract.
- b. You must enter the information in the “Certificate of Competency Automated Computer System” (COCAS).
- c. You should contact the small business to discuss follow-up requirements. You should ask them to notify you when they receive their contract or any other information affecting the contract.

2. What Must Be Done if Award of the Contract Is Delayed?

- a. The COC supervisor or assigned IS should contact the CO within 30 days after issuing a COC and ask about the contract award status. If the CO doesn't award a contract within 45 days, you must contact the CO to determine the status of the contract award. You should place a memorandum of your conversation in the COC case file.
- b. If the CO advises you that award will take place more than 60 days after the date that the COC was issued, you must inform CO of the necessity to revalidate the COC, and send a letter confirming your conversation and decision. You must place a copy of the letter in the COC case file.

3. What Must the COC IS and/or the FS Do When a COC Is Revalidated?

- a. As the assigned IS and/or cognizant FS, you must review those portions of the original COC survey that may have changed. Your review should focus on elements that would affect successful completion of the contract. You should meet with the small business to discuss changes that may have occurred.

- b. You must prepare a supplemental COC report describing your findings during the revalidation process. Your supplemental report must conclude with a recommendation to the COC committee to revalidate or invalidate the original COC.

4. Can a COC Be Invalidated?

Yes, the SBA, at its sole discretion, may rescind a COC prior to contract award if one of the following circumstances exists:

- a. The COC applicant submitted false information or omitted materially adverse information;
- b. New materially adverse information has been received relating to the current responsibility of the applicant; or
- c. The COC has been issued for more than 60 days (in which case SBA may investigate the firm's current circumstances).

5. Who Is Responsible for Revalidating or Invalidating a COC?

The COC committee must make a decision to revalidate a COC. The COC committee must make a recommendation to the AD or AA/GC to invalidate a COC issued at the area office level or at the SBA Headquarters level respectively. Only the AD may invalidate a COC issued by an area office and only the AA/GC may invalidate a COC issued by SBA Headquarters.

6. What Must I Do if a Contract Is Not Awarded to the Certified Small Business?

You must write a report giving the procuring agency's reasons for not awarding a contract. You must send your report to the AD within 10 workdays after the CO notifies you that he/she does not intend to award a contract.

7. What Must the Area Director (AD) Do When Notified That a Contract Will Not Be Awarded to a Small Business?

The AD must review your report, making comments as appropriate, then send it to SBA Headquarters, Director, OIA. The final report must be sent to SBA Headquarters within 5 workdays after receiving the IS's report.

8. What Must I Do After a Certified Contract Has Been Awarded?

You will begin a follow-up process that continues through the basic contract period. It is very important that you accurately monitor contract performance. You may be called upon to offer your expertise to the small business to help it resolve any problems during the contract period. Your suggestions to the small business should focus on helping it meet contract obligations. You must pay special attention during your follow-up analysis to those factors of responsibility necessary to insure successful completion of the contract.

9. What Are My Responsibilities When Performing Follow-ups?

- a. Your responsibility is to report on certified contract performance. You will collect, analyze, and evaluate the information obtained from both the CO and the contractor, looking for trends that indicate potential or actual problems. You must discuss your findings with the contractor, and offer suggestions when appropriate to help keep the contract on schedule. The three methods to obtain data are:
 - (1) Personal inspection (plant visit);
 - (2) Telephone; and
 - (3) Mail or FAX (if written information is necessary).
- b. You should perform plant visits as often as practical because you may discuss requirements, changes, problems, or other aspects of the contract with the small business and perhaps resolve problems at the job site. However, a plant visit may not be practical due to time constraints, work load, or other reason, and then your follow-up must be made by telephone or mail.
- c. You should establish contact with the cognizant Government procurement representatives to discuss and verify the small business' progress. Representatives to contact include:
 - (1) The Government Quality Assurance Representative (QAR);
 - (2) The Administering Contracting Officer (ACO); and
 - (3) The Procurement Contracting Officer (PCO).
- d. Under no circumstances should you or any other SBA employee recommend to a procuring agency that they terminate a certified contract.

10. What Should I Consider When Performing a Follow-up?

- a. You should follow the progress of first article submissions closely. It is important to ensure that all milestones identified by the small business in their COC application are followed.
- b. You should pay attention to when the small business places orders for materials, components, subassemblies, and services required for the contract. The small business should be placing orders in accordance with the milestone chart or production plan submitted with their COC application. This should be far enough in advance to keep the contract on schedule.
- c. You should check that the small business places orders for production materials and related items when first article or pre-production approval has been obtained.
- d. You should check the small business' actual production methods and compare them with information provide by the small business during the COC application review. You should note changes in needed equipment, tools, personnel, materials, inspection, or other points that disagree with information the small business provided with their COC application. You should instruct the small business to obtain written confirmation from the CO of any verbal change orders from Government engineers, inspectors, or other procurement personnel.
- e. You should advise the small business to keep a record of time, date, and place of conversations with Government personnel that bear on the performance of the contract.
- f. You should caution the small business of the dangers of acting on verbal instructions.
- g. You should note special factors such as changes in ownership or affiliations. You should promptly notify SBA Headquarters of any changes in ownership or if the small business becomes large.
- h. You should analyze any altered delivery requirements, agreed upon between the small business and the CO, that change the delivery rate to a more demanding schedule than originally certified. If the revised schedule imposes a significantly heavier requirement than the one used to certify the small business, SBA is relieved for the moral obligation assumed in issuing the COC. However, you should continue to monitor and report contract performance to its completion and provide assistance to the small business as needed. The

same applies when the Government imposes changes to the product to such an extent that it bears little resemblance to the product originally certified, requires different production methods or materials, or impose other changes in production aspects. You should send a letter about these deviations to SBA Headquarters.

11. How Often Must I Perform Follow-ups?

- a. You must perform follow-ups on all open certified contracts at least quarterly. However, certain cases may require more frequent follow-ups than others. The AD or COC supervisor should set priorities to ensure that sensitive and high visibility COCs receive appropriate oversight. You should visit the small business as often as practical.
- b. Integrity cases don't require follow-up action. Contract options exercised with deliveries due after completion of the certified requirement require no additional follow-up.
- c. Follow-up for items (1) through (5) below should be conducted monthly, and follow-up for item (6) should be conducted at least quarterly. Follow-up cases include:
 - (1) High visibility cases (HQ issuance, congressional interest);
 - (2) Delinquent or problem cases;
 - (3) High dollar value contracts (more than \$5 million);
 - (4) Procuring agency appeal or serious agency concerns; and
 - (5) Small businesses with multiple COCs.
- d. All other COCs.

12. Can the COC Committee Recommend Increased Follow-up Activity?

Yes, if the COC committee determines when issuing a COC that a small business' performance needs to be closely monitored, they will recommend monthly follow-ups. However, as contract performance proceeds and perceived risks decrease, the assigned IS may decrease monthly monitoring. The IS must document decisions and rationale for reducing the committee's recommendation for monthly follow-ups.

13. How Do I Report Follow-up Activity?

- a. Use SBA Form 104A, “Small Business Administration, Contract Progress Report of Certificate of Competency,” to report your follow-up activity (see appendix 6).
- b. Your follow-up report must cover the period from the last reported follow-up to the current follow-up. However, your reporting period must not be longer than 90 days or one quarter.
- c. If certification was for credit, a financial follow-up report is mandatory. You are responsible for obtaining financial follow-up data from the assigned FS and incorporating that data into your follow-up report.
- d. A capacity follow-up report is always mandatory.
- e. Your report must cover the small business’ progress on the contract.
- f. Your report must discuss both positive and negative aspects and should include, where warranted, an analysis of problems affecting the small business’ performance.
- g. You should address the status of all contract items on a single form when possible, but you may use additional forms when necessary.
- h. You should complete SBA 104A in its entirety for all contracts. However, it is not necessary to complete both the “Summary of Industrial Condition ...” and the “Summary of Financial Condition...” sections on every report if the contract was certified only for credit, or capacity or frequent follow-ups are made.
- i. You must sign and date the form in the space provided. You must indicate on the form if you visited the small business.

14. Who Does Financial Follow-ups?

- a. The cognizant district office CFD handles financial aspects of certified contracts. The CFD should assign the most capable LO or FS to perform financial follow-ups. When possible, the same FS who processed the COC application should be assigned to follow-up the COC case.
- b. The assigned FS obtains financial information from the small business or elsewhere and sends it to the IS.

- c. The FS must provide data about the small business' current financial condition, including adequacy of working capital, status of line of credit, and the projected financial capacity to complete the contract.

15. What Are the Financial Specialist's Responsibilities When Performing Financial Follow-ups?

- a. The FS is responsible for maintaining contact with the small business and other interested parties to ensure that financial problems do not impede contract delivery schedules. The FS should coordinate his/her follow-up with the IS to reduce duplication of effort.
- b. The FS will contact the small business after award and review the small business' current financial status and capacity to complete each certified contract.
- c. The following are items the FS should review.
 - (1) The small business' current financial condition and changes since date of their COC application financial statements.
 - (2) Status of the small business' financial arrangements including terms and conditions. For example:
 - (a) Loans;
 - (b) Bank financing;
 - (c) Supplier credit; and
 - (d) Personal resources.
 - (3) Adequacy of the small business' financial records, planning, control, general accounting, cost accounting, budgeting, and updated cash flow.
 - (4) The small business' financing and cash flow for both the contract covered by COC, and total existing and projected volume of business during the contract.
 - (5) Financial arrangements with subcontractors and suppliers.
 - (6) Availability of progress payments from the contracting agency.

- d. The FS will review and analyze the small business' projected cash flow for the balance of the contract term. The FS should update the projected cash flow and compare fund requirements with availability.
- e. The FS should consider information from other sources such as the procuring agency, suppliers, other sources of financing, as well as commercial credit reports.
- f. The FS must immediately advise the AD or COC supervisor of any financial problems such as difficulty in obtaining payment on Government invoices or other Government claims.
- g. The FS should ask the IS to help with problems of payment from procuring activities.

16. What Is Required in the Financial Specialist's Follow-up Report?

- a. The FS must provide the IS with a written report of the follow-up. This report may be attached to your SBA 104A (see appendix 6) or may be submitted separately to the COC supervisor.
- b. The FS follow-up report should not repeat production information. His/Her report must discuss the small business' financial status at the time of the follow-up.
- c. The FS's follow-up report should tie in with the overall contract requirements. The reports (IS and FS) should contain a statement of opinion as to the financial capacity of the small business to complete the contract.

17. What Do I Do When a Contract Is Terminated for Default?

You must prepare a Termination for Default (T for D) report and deliver it to the AD within 10 workdays. Your report must discuss:

- a. Details surrounding the reasons for the termination;
- b. The number of follow-ups performed (specifying the number of field visits);
- c. Specific actions taken to help the small business; and
- d. Lessons learned because of the termination.

18. What Must the AD Do When Notified That a Contract Has Been Terminated for Default?

The AD will review your T for D report, making comments as appropriate, and send it to SBA Headquarters, Director, OIA. The AD must send the final report to SBA Headquarters within 5 workdays after receiving your report.

19. When Does the AD Report Follow-up Activity to the Office Industrial Assistance?

- a. The AD must send a quarterly analysis of all delinquencies to the OIA. Analysis must include the following:
 - (1) The name of each delinquent firm;
 - (2) The length of the delinquency;
 - (3) The name of the IS assigned to the case; and
 - (4) Corrective actions taken.
- b. The report must include calculations for the overall average delinquency rate for the quarter and the delinquency rate for each of the following:
 - (1) Delinquent or problem cases;
 - (2) High dollar value (more than \$5 million);
 - (3) Procuring agency appeal or serious agency concerns;
 - (4) Small businesses with multiple COCs; and
 - (5) All others COCs.
- c. The OIA will use this information as one of its tools used to develop statistical analysis of program trends.

Chapter 10

Disclosure of COC Information

1. Who May Disclose COC Information?

Usually only the IS, COC supervisor, AD, OIA, or Office of FOIA/Privacy Act will disclose information about COC cases.

2. When May COC Information Be Disclosed?

When in doubt you should ask the AD for advice when you receive a request for information about a COC case. Normally you will not disclose any information about a COC case to anyone outside SBA except in the following cases.

- a. You tell the CO that you intend to award the COC (see paragraph 7-6a). This is the only time you may disclose any preliminary recommendation to anyone outside SBA.
- b. You receive a FOIA request. You will process the FOIA request according to paragraph 10-3 below and the advice of your FOIA representative.
- c. You receive a request from another Federal agency or department. You will process this request according to SOP 40 03. This SOP states that you:
 - (1) Give information only to persons who give proper identification; and
 - (2) Advise those persons that information is confidential, for Government purposes only, and is not to be made public.

3. What Must I Do When I Receive a Freedom of Information Act (FOIA) Request?

You should follow the guidelines listed below before disclosing documents from the COC case files.

- a. In general, the applicant may receive all factual information and you may exempt only “deliberative” or confidential information. You should contact the Office of General Counsel before releasing any documents when the case is being protested or litigated.

- b. You may disclose the COC meeting summary to any requester when the final action is affirmative. When the final action is negative, you may disclose the summary sheet to the applicant only.
- c. You may disclose the COC Review Committee meeting summary to any requester when the final action is affirmative, but only to the applicant when the final action is negative. The AD should review all documents to make sure any “deliberative” or confidential information, including the identity of the source, is removed from the requested document.
- d. You may disclose SBA Form 1531, “Application for a Certificate of Competency,” only to the applicant and after you remove Section VIII (Recommendations) from the disclosed document. You must not release this document to anyone else.
- e. You may disclose the IS’s Narrative Report only to the applicant and after you have removed the summary and recommendations section. Before disclosing this report to the applicant, the IS and the AD should review the report and remove any “deliberative” or confidential information, including the source of this information.
- f. You may disclose the FS’s Narrative Report only to the applicant after you delete the sections containing the credit analysis and recommendation. Before disclosing this report to the applicant, the FS and the AD should review the report and remove any “deliberative” or confidential information, including the source of this information.
- g. You may disclose to the applicant SBA Form 74B, “Application for COC,” Cash Flow Projection and any other forms or documents completed by and given to SBA by the applicant.
- h. You must not disclose, without permission of the originator, documents and information obtained from any third party. You should discuss with the Office of Inspector General (OIG) any questions about the disposal of documents and information obtained from the SBA OIG.
- i. You must notify the requester of their right of appeal whenever you withhold any document or information under an exemption (see SOP 40 03 and SOP 40 04) of the FOIA. The requester may appeal to:

Freedom of Information Act and Privacy Act Officer
 U.S. Small Business Administration
 409 -3rd Street, S.W.
 Washington, D.C. 20416

Appendix 1

Acronyms, Terms, and Definitions

The following acronyms, terms, and definition are used throughout this SOP and by Government contracting personnel.

ACO - Administrative Contracting Officer.

AD - Area Director.

Applicant - The applicant is the business submitting the COC application who is named on the Government procurement document.

BAFO - Best and Final Offer.

Capacity - Capacity is the ability of a business to meet the quantity, quality and delivery requirements of a Government procurement while still being able to meet all other current and projected commitments.

CDRL - Contract Data Requirements List.

Certification of Integrity - Certification of Integrity means the business has substantiated its moral soundness and honesty, and has refuted allegations of lack of integrity to SBA's satisfaction (see integrity).

CFR - Code of Federal Regulations.

CFD - Chief, Finance Division.

CMR - Commercial Market Representative.

CO - Contracting Officer.

COC - Certificate of Competency.

COCACS - Certificate of Competency Automated Computer System.

Credit - Credit is the ability of a business to perform to a Government procurement from a financial standpoint taking into consideration all other current and projected commitments.

FAR - Federal Acquisition Regulations.

FAX - Facsimile Data Transmission.

FOIA - Freedom of Information Act.

FS - Financial Specialist.

GC - Government Contracting.

GFE - Government Furnished Equipment.

GFM - Government Furnished Material.

GFP - Government Furnished Property.

IFB - Invitation for Bid.

INT - Integrity.

Integrity - The Comptroller General has defined “Integrity” to mean “uprightness of character and moral principle, honesty, probity” and “moral soundness, free from corrupting influence or practice.”

IS - Industrial Specialist.

NDI - Nondevelopmental Items.

OHA - Office of Hearings and Appeals.

OIA - Office of Industrial Assistance.

OIG - Office of Inspector General.

OSDBU - Office of Small and Disadvantaged Business Utilization.

PCO - Procurement Contracting Officer.

PCR - Procurement Center Representative.

QAR - Quality Assurance Representative.

QAS - Quality Assurance Specialist.

Referral - Referral is a formal notice to SBA from a procuring activity that a CO proposes to reject an otherwise qualified offer received from a small business.

Responsibility - Responsibility is the ability of a business to show with reasonable assurance that it possesses the capacity, credit, integrity, tenacity and perseverance to perform a specific Government procurement.

Responsiveness - Responsiveness is a determination by the CO that an offer conforms to the material requirements of a sealed bid. The concept of responsiveness does not apply to negotiated procurements.

RFP - Request for Proposal.

RFQ - Request for Quote.

SB - Small Business.

SBA - Small Business Administration.

SBIR - Small Business Innovative Research.

SDB - Small Disadvantaged Business.

Significant Portion - That a substantial level of effort is expended, value added, or dollar value performed (excluding cost of material and profit) by a small business as a prime Government contractor. A “significant portion” determination applies only in connection with an unrestricted procurement whose estimated value exceeds the Simplified Acquisition Threshold (SAT).

Simplified Acquisition Procedure (SAP) - The method prescribed in FAR Part 13 for making purchase of supplies or services using imprest funds, purchase orders, blanket purchase agreements, Government-wide commercial credit cards, or any other appropriate authorized method.

Simplified Acquisition Threshold (SAT) - For any contract to be awarded and performed, or purchase made in the United States less than \$100,000.

Tenacity and Perseverance (T&P) - Those qualities of persistence and steadfast pursuit of an undertaking with the aim of doing an acceptable job. Past unsatisfactory performance due to failure to apply the necessary tenacity and perseverance to do an acceptable job and which is not caused by lack of capacity or credit makes a business non-responsible. Certifying that a business has T&P means the contractor has shown SBA that it has and will apply the necessary resources to do an acceptable job on the contract in question.

Two-Step Formal Advertising - A method of procurement in two stages or steps. The first step consists of the proposals, solely to determine the technical acceptability of the proposal. In this step the business does not propose a price. In the second step, bidders

who submitted acceptable technical proposals in the first step, submit offers based on their proposals.

Appendix 2
(paragraph 4-2c and 7-4c(2))
COC Case Folders

1. How are COC Cases Organized and Filed?

All COC cases must be organized and filed in SBA Form 594, "Approved COC Folder." The folder is divided into four parts. Each part of the folder will contain data relating to a particular phase of the case.

2. How Many Folders Must Be Prepared for Each COC Case?

- a. Three folders containing identical information must be prepared for each referral. Each folder must be labeled with the COC case number, and business' name and address. The three folders must be separately identified as follows:

(1) Production (original documents go in this folder);

(2) Regional Counsel; and

(3) Financing Division (this folder may not be required for Tenacity and Perseverance, and Integrity cases).

- b. The official COC case file is the Production file and should be maintained in the office issuing a COC. Original documents must always be filed in the Production folder. The other two folders will contain copies of the original documents.

3. What Type of Folder Should Be Used If a Business Declines to File?

Standard 8 ½" X 11" manila file folders should be used for all cases where the applicant failed or declined to file. Documents should be filed in the same order as other folders, although the "parts" are undesignated.

4. How Long are COC Case Files Retained?

COC case files containing the original submission and any other developed data must be retained for 3 years after completion of a certified contract or after closing a referral.

5. How Must COC Case Files be Organized?

The sequence of filing documents for each part of the folder is from bottom to top. Information must be organized in each part as follows.

Part I - Referral and Supporting Data

1. Drawings (Note 1);
2. Technical specifications (Note 1);
3. Solicitation, IFB, or RFP or other procurement documents;
4. Amendments to item 3 above;
5. Abstract of bids;
6. Pre-award survey and supporting documents;
7. CO's Determination and Finding of Non-Responsibility;
8. Referral correspondence;
9. Correspondence concerning processing time limit extensions; and
10. SBA Form 106.

Part II - Production Survey

1. Brochures (if any);
2. Pricing build-up, cost analysis data;
3. Scheduling plan, for COC contract from date of award to final completion;
4. Plant loading and production schedules, performance schedule or milestone chart for firm's current workload including the firm's current backlog and the COC contract;
5. Inventory, subcontracting and purchase, and confirmations of material suppliers and subcontractors;
6. Quality control data (Note 1);
7. Facilities and equipment data;

8. Personnel resources, confirmations of availability of manpower and skills;
9. Customer reference (Commercial and Government);
10. Company's product or service lines;
11. Organizational chart and line of succession;
12. History of the company;
13. Officers and owners, background data on key personnel, and resumes;
14. SBA Form 912 (where required);
15. Additional information provided by the business during the survey process;
16. SBA Form 1531 on subcontractors;
17. Secondary production report on subcontractor;
18. IS's memoranda, conversation records;
19. IS's Narrative report;
20. SBA Form 1531 on applicant;
21. COC Review Committee recommendations;
22. Notification of intended affirmative action ("Faxed" message or letter to CO);
23. Reply from CO concerning intended affirmative action;
24. Regional counsel's memorandum;
25. Summary sheet; and
26. Area director's recommendation.

Part III - Finance Survey and Supporting Data

1. Supporting documents for balance sheets;
2. Cash flow sheet for proposed contract (SBA Form 74 B);

3. Cash flow sheet for total workload (SBA Form 74B);
4. SBA Form 1531;
5. Miscellaneous documents pertinent to business and/or contract;
6. Bank letters to support commitments;
7. Other letters supporting commitments by suppliers;
8. Letters from principals and/or standbys;
9. SBA Form 355;
10. Credit reports and Dun & Bradstreet; and
11. Financial Officer's report.

Part IV - COC Action Follow-up

1. Copies of certifying letter;
2. Correspondence pertaining to award;
3. Correspondence pertaining to initial follow-up visit;
4. Monthly SBA Form 104A and related correspondence, in date sequence (latest report on top); and
5. Final SBA Form 104A and related correspondence.

Note: If any documents provided by the CO or business are too voluminous, insert them in a separate envelope or package and note on slip-sheet in the file.

Appendix 3
(paragraphs 4-3b(4), 4-5a, and 10-3e
Sample Outline for
Industrial Specialist's Narrative Report

The IS's Narrative Report should include the following to make sure the small business receives a complete and fair analysis.

Name of Firm:

Report Date:

Address of Firm:

Survey Date:

Case Number:

1. Procurement

- a. Solicitation number (IFB or RFP)
- b. Item or service being procured
- c. Quantity and period of performance
- d. Delivery schedule including first article
- e. History of item or service
- f. Set-aside, partial set-aside, unrestricted procurement

2. Referral

- a. Reason(s) (capacity, credit, tenacity, perseverance, integrity)
- b. Pre-award Survey (by whom and when) unsatisfactory factors
- c. Main concern of Procuring Agency

3. Company Background

- a. History and background (when founded etc.)
- b. Current owners and organizational structure
- c. Main type of business
- d. List affiliates and discuss
- e. Highlights (strong and weak points)
- f. Key personnel/number of employees
- g. Principal products or services

4. Eligibility

- a. Size and size standard (include affiliates)
- b. Significant portion etc. (unrestricted procurement)

- c. Prime contractor performance requirements (limitation of subcontracting)(set-asides more than \$100,000)

5. Technical Capabilities

- a. Items previously produced or services previously performed
- b. Capabilities of employees including part-time, and those identified to hire
- c. Ability to obtain required specifications and drawings

6. Plant, Facilities and Equipment

- a. Space available or ability to obtain
- b. Special equipment available or ability to obtain
- c. Special facilities needed
- d. Production lines
- e. Test equipment, special tools, dies, gauges, and jigs
- f. Storage space
- g. Safety features
 - (1) Hazardous material
 - (2) Fire
 - (3) A/C
 - (4) Exhaust
 - (5) Water system
 - (6) Other

7. Material Availability

- a. Purchasing, placement of orders, and delivery schedule
 - (1) Material
 - (2) Equipment
 - (3) Supplies
- b. Subcontracting
 - (1) Delivery agreements
 - (2) Material
 - (3) Services
 - (4) Terms of payment
- c. Material handling (see 6g)
- d. Material storage (see 6g)
- e. Special requirements
- f. Long lead time items

8. Quality Control

- a. Requirements of solicitation
- b. Current procedures
- c. Special requirements/capabilities
- d. Applicability to long lead time items or services
- e. Manuals developed and available
- f. Personnel trained in quality and available for work on this contract

9. Production/Performance Plan

- a. Plan for successful performance including first article and Contract Data Requirements List (CDRL)
- b. Delivery/completion for existing backlog
- c. Engineering
- d. Personnel requirements
- e. Performance record on similar/identical items
- f. Current and past performance on Government and commercial work
- g. Current and past performance on COC contracts with performance history
- h. Inventory for use on COC

10. Cost Analysis

- a. Material
- b. Labor
- c. Subcontracting
- d. Overhead
- e. G & A
- f. Profit/Loss
- g. Other contracts
- h. Contingencies

11. Summary

- a. Your recommendation
- b. Positive factors used as the basis for your recommendation
- c. You must address the CO's negative findings and address how the small business has or will overcome them. Where issues concern poor performance, an explanation of the facts surrounding the poor performance will be supplied.

12. Recommendation

A recommendation for issuance must state, “There is reasonable assurance that the applicant will meet the quantity, quality, and delivery schedule of the proposed contract if awarded.”

Appendix 4
(paragraph 4-4p)
Standard Supporting Attachments for COC Reports

- a. History of company
- b. Organizational chart
- c. Management and key personnel
- d. Photos of facilities (optional)
- e. Production flow charts
- f. Plant layout
- g. Subcontractor quotes (include major and long lead items only)
- h. List of major Government contracts (include contract number, agency name and telephone number of CO, and record of performance)
- i. Bill of Material (list of major raw material, purchase parts, and other items that may adversely affect completion of the contract)
- j. List of labor operations (including production rate and controlling operation)
- k. Support data for cash flow
- l. Business brochures and sales notices (as available)

Appendix 5
(paragraph 4-8, 7-2a(3))
Outline for Financial Specialist's Report

The IS's Report should include the following to make sure the small business receives a complete and fair analysis:

Case Number:

Data Received:

Application Date:

Report Date:

1. Name and Address of Applicant: If a corporation, furnish exact corporate name. If a partnership, list names and addresses of each partner and state type of partnership. If an individual, list business and home address.
2. Type of Business: Give brief statement of principal products or services, whether for military or civilian use, original date established, and subsequent changes in organization ownership, etc.
3. Eligibility: Under the applicable Standard Industrial Classification (SIC) Code.
 - a. Number of Employees: Average number of employees of the business, including employees of domestic and foreign affiliates, employed during each of the pay periods for the preceding completed 12 calendar months.
 - b. Annual Receipts: Total revenue received for each of the most current 3 fiscal years.
4. Solicitation Number and Information on Procurement Action: The Invitation for Bid (IFB) or Request For Proposal (RFP) number, description of the item, quantity, bid price of item or service required, and total price. Also include the name and address of contracting agency.
 - a. Required Delivery Schedule: Beginning date; weekly, monthly, or periodic rate; and completion date. Explain reason if applicant proposes a different schedule.
 - b. Pre-award Survey: List reasons for adverse findings.
 - c. Performance Bond: Discuss applicant's ability to provide a bond.

(1) Required? Yes____ No ____

(2) Can applicant provide bond? Yes ____ No ____

d. Previous COC Actions: Discuss earlier COC referrals.

Amount of COC Number	Action Approved/ <u>Declined</u>	Date of <u>Action</u> <u>Contract</u>	
<u>Experience</u>			

Complete the "Experience" column only in the event SBA issued the COC. The experience column should state whether the contract is on schedule or was completed according to the delivery schedule.

5. Credit Analysis: Discuss and express opinion of applicant's cash flow sheets. You must obtain and differentiate between cash flow sheets and total plan load in cases over \$250,000. If the applicant intends to rely upon borrowing to perform the work, an unqualified commitment stating the amount, terms, and condition must be obtained and a copy included with the report. Discuss applicant's balance sheet, especially the working capital position, and other credit factors. You should include a copy of the D&B credit report along with appropriate comments.
 - a. Balance sheet may be prepared on SBA 1531 or another format following generally accepted accounting principles and signed by a proper official (with title) of applicant. Forward a copy with the report. You should age accounts receivable and accounts payable. You should also give the gist of other substantial assets and liabilities. You should list the original amounts, dates, maturities, and repayment terms of notes and mortgages payable along with details of capital stock and net worth. The balance sheet should be spread upon the LO's report in reasonable details of capital stock and net worth. The balance sheet should be spread upon the LO's report in reasonable detail. The statement date should not be more than 90 days before the application date.
 - b. Earnings may be shown on SBA 1531 or other format according to generally accepted accounting principles for the last 3 fiscal years and for the current interim period (see sample income statement).
 - c. Other things to consider. Specific sources of credit and amounts available from each source. Credit position with suppliers, customers, and financial houses with confirmation of such credit. Significant obligations including suits and claims pending.

- d. You must obtain Guarantee or Standby Agreements if applicant's financial competency is dependent upon such agreements.
 - e. Field visit.
 - (1) To applicant's plant and/or offices; and
 - (2) To other sources.
 - f. Discuss applicant's financial capacity to accept: (1) increased option, (2) set aside portion, if applicable, or a potential addition to subject contract, and (3) quantity in excess of estimated requirement, term, or open-end contract.
6. Recommendation. State clearly and cite specific reasons. Recommend Yes or No.
- a. Loan Officer _____
(Signed)
 - b. Chief, Finance Division _____
(Signed)
 - c. ADA/CA _____
(Signed)

Sample Balance Sheet

BALANCE SHEET AS OF __

ASSETS

Current assets

Cash	\$__	
Accounts receivable	__	
Notes receivable	__	
Reserve for doubtful account	__	
Inventories		
Finished Goods	\$__	
Goods in work	__	
Raw Material	__	
Total inventories	\$__	
*Other current assets	__	
Total current assets		\$__

Property and equipment

Land and building	__	
Plant equipment and fixtures	__	
Office equipment and fixtures	__	
Transportation equipment	__	
Total property and equipment	__	
Less accumulated depreciation	__	
Net property and equipment		\$__
*Other assets	__	
Total assets		\$__

*Itemize on a separate sheet

LIABILITIES AND SHAREHOLDER'S EQUITY

Current liabilities

Accounts payable	\$__	
Accrued expenses	—	
Current portion of long term debt	—	
Total current liabilities		\$__

Long-term debt

Note payable	—	
Mortgage payable	—	
Less current portion of above	—	
Total long-term debt		\$__

Shareholder's equity

Capital stock outstanding	—	
Additional paid-in capital	—	
Retained earnings	—	
Capital account (if individual or partnership)	—	
Total shareholder's equity		\$__
Total liability and shareholder's equity		\$__

Sample Income Statement

INCOME STATEMENT:

Corporation 19__ 19__ 19__ To date

Net Sales (Gross sales less
returns and allowances) \$ \$ \$ \$ _____

Net profit (after depreciation and taxes)

Depreciation

Income Taxes

Compensation of officers

(Included in expenses)

Dividends paid

Proprietorship or Partnership

Net sales (Gross sales less

returns and allowances)

Net profit (after depreciation and withdrawals)

Depreciation

Withdrawals

Sample Letter from Financial Institution

June 7, 1996

Small Business Administration
330 N. Brand Blvd., Suite 1200
Glendale, CA 91203-2304
Attn: Chief of Finance

Re: IFB F41608-96-D-1234
3,500 Widgets
Total Bid \$123,456.00

Gentlemen:

We agree to extend a line of credit in the amount of \$(Insert Amount) to (Name of Company) for the express purpose of providing funds to implement financial performance on (Identify Contract).

If funds in excess of the credit line are needed to complete this contract, we currently feel inclined to grant the additional amounts.

Sincerely,

John Doe
Bank Officer

We concur in the above conditions.

_____ Date: _____
Signature of Company Officer

Appendix 6
(paragraphs 9-13 and 9-16)
SBA Form 104A, “Contract Progress Report”

Instructions for completing SBA Form 104A, “Contract Progress Report of Certificate of Competency.”

When you enter dates on the form, you must use the MMDDYY format. For example: July 31, 1996, is entered as 073196 or 07/31/96. Always enter six digits.

Region: Enter your region or area designation.

Case No.: Enter case designation, e.g. COC-09-12345

Reporting Period, From ____ To ____ : Enter date of last report and date of current report.

Name and Address of Company (INCLUDE ZIP CODE): Enter name and address of company. Include manufacturing location if different from company headquarters.

Method of Obtaining Data (check): Both the IS and FS must check the box or boxes that describe how your information was acquired.

Date the Plant was Last Inspected: Enter the date you were at the contractor’s plant.

By: Enter your first initial and last name.

Date Certificate Issued: Enter date the COC was issued. Also, enter the reason for referral, e. g. (1) Capacity, (2) Credit, (3) Both capacity and credit, (4) Tenacity and Perseverance, and (5) Integrity.

Date Contract Awarded: Enter date the contract was awarded to the business.

Name of Contracting Officer: Enter the name and telephone number of the cognizant CO or contract specialist.

Contract No: Enter the contract number.

Item or Service: Identify the product or service required. You should include drawing or part numbers if applicable.

Delivery Schedule (Contract): Enter contract delivery schedule.

a. **Unit Price for Above Item:** Enter unit price.

- b. **Total Price for Above Item:** Enter total price if applicable.
- c. **Total Price for Entire Contract:** Enter total price for entire contract.

Shipping and Performance Data (Quantity/\$ Value/Date)

- a. **Total Quantity Required by Contract:** Enter total quantity required. If a service contract, enter the number of months of service required.
- b. **Cumulative Quantity Required to Date:** Enter the cumulative quantity due as of the date you obtain your information. For example, 3,000 crates 10/11/96.
- c. **Cumulative Quantity Completed and Shipped to Date:** The cumulative quantity shipped should be shown as of the actual date of the last shipment. For example, 3,000 crates 10/13/96.
- d. **Quantity Required This Reporting Period:** Enter the quantity required by the contract delivery schedule. For example, the contract requires 500 crates to be shipped by 10/11/96.
- e. **Quantity Actually Shipped During This Reporting Period:** Enter the actual quantity and date shipment was made. For example, 500 crates 10/13/96. In this example the last shipment was made days late.
- f. **Estimated Quantity to be Shipped Next Reporting Period:** This is your best judgment forecast of the next months shipment.

Contract Status, [A] On or Ahead of Schedule, [B] Delinquent, [C] Contract on Schedule (Delinquent But Not Contractor Caused):

Place an "X" in the appropriate contract status box.

If block "C" is checked, you must provide specific reasons why the contract is delinquent but the contractor is not the cause of the delinquency. Block "C" is limited to the following.

- a. If the Administrative Contracting Officer (ACO) or Procurement Contracting Officer (PCO) states that the contract is considered on schedule, a modification to the contract extending the delivery date will be made. You must include in your report: the name of ACO/PCO; telephone number; and date of contract.
- b. Government Furnished Equipment (GFE) or Government Furnished Material (GFM) is not available.

- c. Government owned tools, jigs, or fixtures are not available.
- d. Government caused delays between approval of First Article and “go ahead” production quantities.
- e. Stop work orders issued by the Government due to technical data package errors.
- f. Government caused delays in First Article testing.
- g. Government required Engineering Change Proposals (ECPs).
- h. Sole source items required by the contract and source is not made available by the Government.

Delinquencies due to defective bid package, i.e., technical data package, drawings, specifications, schedule conflicts, etc, are not Government caused delays. It must be assumed that the contractor bid with full knowledge of the solicitation and how to overcome these deficiencies within the scheduled time frame.

Status Date: Enter the date your information was obtained.

Summary of Industrial Condition and Capacity to Complete Contracts as of Report Date:

You must provide a complete and clear report of the contract’s status at the time you perform your follow-up. Your report must provide specific details regarding the contract’s status. Your report should identify the person or persons you contact and their telephone number.

Stating that “no problems are foreseen” or “contract progressing satisfactorily” does not constitute an adequate report.

If the contract is delinquent, you must indicate in your report the following:

- a. An estimate of the extent of delinquency, both in quantity and number of days;
- b. The causes of delinquency;
- c. Actions the contractor plans to take to correct the delinquency; and
- d. Advice you have given to the contractor to assist in correcting delinquencies.

IS Report Prepared by (Signature): The IS preparing the report must sign and date the report.

GC Reporting Official (Signature): The responsible COC supervisor must sign and date the report.

Summary of Financial Condition and Capacity to Complete Contract as of Report

Date: The Financial Specialist's (FS) summary of financial condition and financial capacity should include, but is not limited to the following:

- a. A statement of the business' current financial condition including adequacy of working capital;
- b. Status of line of credit;
- c. Status of SBA loans;
- d. Determination of profit or loss on certified contract and total business; and
- e. The projected financial capacity to complete the contract.

A general statement such as "Firm has sufficient finances to complete the contract" is not acceptable. Specific reasons must be listed. If the contractor is having financial problems, the report should indicate what advice SBA has provided.

FS Report Prepared by (Signature): The FS preparing the report must sign and date the report.

Financial Reporting Official (Signature): The Chief, Finance Division must sign and date the report.